Supreme Court, U.S.
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No. _____

IN THE
Supreme Court Of United States

De Shen Petitioner

vs.

T.D. Waterhouse Investor Service Respondent

On Petition For Writ Of Certiorari To

United States Court Of Appeals For The First Circuit

APPENDICES FOR WRIT OF CERTIORARI

De Shen

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Malden, MA 02148

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June 20, 2004

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APPENDICES 1

UNITED STATES COURT OF APPEALS
FIRST CIRCUIT

No. 03-1415

Plaintiff and Appellant:)
De Shen)
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
) Appeal Action No. 03-1415
)
Defendant and Respondent:)
TD Waterhouse Investor Service, Inc)

May 4, 2003

BRIEF OF APPELLANT

On appeal from U.S. District Court, District of Massachusetts

ORAL ARGUMENT REQUESTED

APPEARANCES:

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Malden, MA 02148

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JURISDICTIONAL STATEMENT

Bill of Right should be applied.
All people are created equal.
Pursuant to 15 U.S.C.A. §78a, Fairness is the Basic principle of stock trading.

STATEMENT OF THE ISSUES

1. Did Mr. William Young err in knowing there were some conflict interests, but still ordering this case to be judged by arbitration? (See Addendum 02)

2. Did Mr. William Young err in knowing due to conflict interests, there were Arbitration Management Frauds during the arbitration, but not investigating

and punishing the Arbitration Management Fraud? (See Addendum 03, 07, 08, 09)

3. Did Mr. William Young err in knowing due to the conflict interests, there were Arbitration Management Frauds, and the Arbitrators did not make fair arbitration, but still confirming the Arbitration Award? (See Addendum 07, 08)

4. Did Mr. William Young err in against the common sense, denying that the securities trading should be fair, and 'First come, first serve' should be one of the basic criteria for the trading fairness? (See Addendum 07)

5. Did Mr. William Young err in knowing that the judgment should be based on facts, but denying the Plaintiff compel the Defendant to present case related critical data to the Court? (See Addendum 04)

6. Did Mr. William Young err in denying having a hearing in Oct. 7, 2002's Court ruling? Did Mr. William Young err in denying providing reasoning for his ruling in the Oct. 20, 2002's Court ruling? (See Addendum 05, 06)

7. Did Mr. William Young err in denying the Plaintiff's motion to 'Request Ms. Kelly Davis To Testimony on the Court'? (See Addendum 09)

8. Did Mr. William Young err in denying the Plaintiff's motion to 'To Add NASD Dispute Resolution, Inc to Defendant List of This Case'? (See Addendum 09)

9. This case is so simple, so obvious, however, the Arbitration made a wrong arbitration, Mr. William Young confirmed this wrong arbitration result. Is there any factors of 'race discrimination against Asia American' influenced this case?

10. Should Mr. William Young study the new law passed by Congress and Senate, signed by President, and uphold those new laws? (See Addendum 07, Appendix 33)

STATEMENT OF THE CASE

In this case, the Plaintiff exposed the Defendant's trade fraud, the arbitration management fraud, the arbitration panel's unfair judgment, and the Mr. William Young's misjudgment.
The Plaintiff once said, "I am holding a great flag, a flag of justice; a flag of fair; a flag of 'All people are created equal'" (See Appendix 12). The Plaintiff hopes that our judges should uphold the same flag.

STATEMENT OF THE FACTS

On March 7, 2000, a trade fraud was happened. The Market Recap (See Appendix 01) of March 7, 2000 had clearly indicated that it is the Defendant's mistake. After many times phone calls between the Plaintiff and the Defendant, the Defendant did not commit its mistake. Hence, a law suite was filed (See Appendix 05) under the suggestion of the lawyer of the week of the Framingham Court. The Defendant requested to handle this case by arbitration. However,

the Plaintiff believe that the customers have the freedom right to choose whether to solve this case by arbitration or by court according to the Bill Of Right. Judge Young held a conference with the Plaintiff and the Defendant. The judge informed both sides that this case should go through arbitration first. However, if the Plaintiff feels that the result is not proper, or there is any item cannot be arbitrated, the judge would like to continue handling this case on the court.

When the Plaintiff preparing for the Arbitration Claim, the Plaintiff found that there is one issue, which will conduct the conflict interest if this case handled by Arbitration. On Feb. 3, 2001, the Plaintiff filed a motion, inform the Court that there is a conflict interest issue if this case handled by arbitration (See Appendix 03, 06). In this motion, the Plaintiff requested this case should be handled by the District Court according to the Bill Of Right. However, the Court denied this motion (See Appendix 07). The Plaintiff believes this ruling was incorrect. It is violated the Constitution.

Although the Plaintiff worried about that there might be some conflict interests issues by going through the arbitration, the Plaintiff decided to follow the judge's order to seriously go through the arbitration first. The Arbitration Statement of Claim was submitted on July 26, 2001 (See Appendix 08). The arbitration hearing held on June 20, 2002.

As predicted, due to the conflict interest, **the arbitration management frauds were happened**, and the award of arbitration is extremely unfair (See Appendix 09, 10, 14). It unfairly dismissed the

Plaintiff's claim in the entirety. **Every item in the Plaintiff's Statement of Claim was not be arbitrated! There is no any conclusion from the arbitrators on each item of the Plaintiff's Statement of Claim. Of cause, there is no any reasoning on how to get those conclusions!**
Count (8) which is directly associated with NASD was untouched;
The Defendant's failure to execute customer's order was not punished;
The Defendant's cheating and insulting customer was not punished;
The Defendant's cheating SEC was not punished;
The Defendant's lying under the oath was not punished.

Due to the conflict interests, when organizing the arbitration panel, the arbitration administrator forged the arbitration panel. After the arbitration, the arbitration administrator modified the hearing tape.

Considering that Mr. William Young promised that if the arbitrators do not arbitrate some of the items in the Plaintiff's Complaint, the Plaintiff could come back to the Court (See Appendix 04), the Plaintiff submitted a motion to request to re-open this case in the District Court on Aug. 17, 2002 (See Appendix 17, 18). In this motion and the cover letter, the Plaintiff reported the unfair arbitration result, including that many items are not arbitrated at all. The Plaintiff also reported the Arbitration Management Fraud to the Court. However, Mr. William Young broken his promise, and denied this motion (See Appendix 20).

Considering that Judgment should base on facts instead of prejudice, the entire arbitration is baseless since until now the Defendant has not submitted the case related critical trading data yet. Hence, the Plaintiff submitted a motion to "Compel The Production Of Documents" on Aug. 29, 2002(See Appendix 19). However, Mr. William Young ignored that the fact that due to Conflict Interests, the arbitration result is extremely unfair, and denied the Plaintiff's motion (See Appendix 21).

Considering that the Court denied the Plaintiff's motions might be all based on a wrong assumption that the arbitration conducted a fair resolution. The Plaintiff submitted the third motion (See Appendix 22) on Sep. 29, 2002 to request a hearing, so that the Plaintiff can explain to the Court why the arbitration result is extremely unfair. A good judge should listen to the people. However, Mr. William Young even denied this basic requirement on Oct. 7, 2002 (See Appendix 23).

The Plaintiff was really surprised about Mr. William Young's ruling on Oct. 7, 2002. Hence, the Plaintiff submitted a motion to "Requesting the reason of court ruling on Oct. 7, 2002" (See Appendix 24). Unfortunately, the Plaintiff even cannot get the reasoning from the court. Mr. William Young was even unable to provide any reasoning (i.e. according to which law(s)) about his ruling (See Appendix 25).

The Plaintiff has to request the Transcript of the conference of Nov. 14, 2000, on which, Mr. William Young promised to the Plaintiff that the Plaintiff can come back to Court if the arbitration result is unfair or

some items in the Complaint are not arbitrated. On Nov. 4, 2002, the Plaintiff received a copy of the Transcript (See Appendix 04).

Since the arbitration administrator edited the arbitration hearing tapes and denied to provide a true copy of arbitration hearing tapes. The Plaintiff submitted a motion to "Compel NASD to Provide True Copy Of Hearing Tape Of Case 01-03697" on Nov. 16, 2002 (See Appendix 26). The original hearing tapes are four tapes. The edited tapes are three tapes(See Appendix 16). However, Mr. William Young even denied punishing the arbitration administrator's criminal actions. The Plaintiff's motion was denied.

According to Mr. William Young's word on the deny letter, the Plaintiff submitted a motion to "Request Vacation of the Arbitration Award on Case NASD No. 01-03697" (See Appendix 27). Finally, Mr. William Young agreed to have a hearing on this issue. The Plaintiff saw a glimpse of hope that the justice might be fulfilled on this case by the hearing. The hearing was held on Feb 6, 2003.

Unfortunately, Mr. William Young did not make a fair judgment on this hearing (See Appendix 28). (1) Mr. William Young claimed this case is "a serious one". However, Mr. William Young did not handle this case seriously. Mr. William Young did not investigate the arbitration management fraud. Also, he did not investigated on the trade fraud. Judgment should be based on the fact, however, Mr. William Young did not request the Defendant providing the case related critical data. (2) Mr. William Young

ignored the arbitration management fraud on forging the arbitration panel list, claimed, "If you get a biased arbitrator, they won." (3) Mr. William Young ignored the arbitration management fraud on 'cooking' the hearing tape, and asked the silly question "Suppose that is true, what does that show?". "Falsifying records" is against the Congress and Senate passed new law and the President's speech (See Appendix 33), Mr. Suzanne Green's bad action has breached the people's trust and abused NASD's power. This criminal action should be punished. However, Mr. William Young did not uphold Congress and Senate passed new law, and did not punish Mr. Suzanne Green's criminal action. (4) Mr. William Young even challenged the fairness of stock trading, deny that "First come, first serve" should be one of the criteria of fairness in stock trading. (5) Mr. William Young ignored the arbitration management fraud, and claim that "Arbitration is second-class justice", so that no matter the arbitration administrator made how serious criminal action, the arbitration result has to be confirmed. According to Mr. William Young's logic, the arbitration administrator is just like the Emperor or Empress, who can do any criminal actions as his/her will, and cannot be punished.

SUMMARY OF ARGUMENT

According to the Bill of Right, due to the conflict interests, this case should be handled by the District Court from the beginning. Ordering this case to be handled by NASD arbitration is one misjudgment.

The District Court should investigate the arbitration management frauds and punish those arbitration management frauds.

The unfair arbitration result should be vacated.
The Defendant's failure to execute customer's order should be punished;
The Defendant's cheating and insulting customer should be punished;
The Defendant's cheating SEC should be punished;
The Defendant's lying under the oath should be punished;
The Defendant failed to provide case related critical information should be punished;
The Defendant's invading the Plaintiff's privacy should be punished;
The Defendant's blocking customer's on-line account should be punished.

Mr. William Young should study and uphold the new law, which passed by Congress and Senate, and signed by the President.

ARGUMENT

I. Conflict interest should be avoided

When the Plaintiff preparing for the Arbitration Claim, the Plaintiff found that there is one issue, which will conduct the conflict interest if this case handled by Arbitration.

On Feb. 3, 2001, the Plaintiff filed a motion, inform the Court that there is a conflict interest issue if this case handled by arbitration.

"On the Nov 14's conference, our Honorable Judge Young suggests that the Plaintiff should go through Arbitration first. If the problems cannot be solved or the problems were not solved properly, then our Honorable Judge will accept to handle this case with justice in this court. The Plaintiff agreed to follow our Honorable Judge's suggestion. The Plaintiff rewrote a Complaint for Arbitration (See Attached). **However, after rewriting the Complaint, the Plaintiff discovered that there is a conflict interest if this case goes through arbitration.** Mr. Sullivan informed me that I might bring arbitration before either the NASD or NYSE. The count 8 in the new Complaint document might be closely related to NASD and NYSE. With my understanding, NASD or NYSE cannot arbitrate itself since there is a conflict interest. Hence, the Plaintiff would like to present this point to our Honorable Judge. After considering avoiding the conflict interest, the Plaintiff strongly requests this case to be re-opened and to be handled directly through this court.

.....

I, hereby, pray to the Honorable Judge in this Court, in order to avoid the conflict interest, this case should be reopened and the investigation about the Defendant's illegal actions in this case should be handled by this Honorable Court. I sincerely pray to the Honorable Judge to provide justice judgments in this court on this case according to the Bill Of Right.

"

However, the court denied this motion (See Appendix 07). The Plaintiff believes this ruling

was incorrect. It is violated the Constitution. In the count 8 of the Plaintiff's Complaint, the Plaintiff pointed out that one NASD's contract tries to prevent Defendant's customer presenting valid data evidence to the honorable Judge in the court. NASD cannot arbitrate itself. The conflict interest should be avoided. With the conflict interest, the arbitration will be not fair. Further, Freedom of Speech is included in the Bill of Rights (the first ten amendments of US Constitution). According to the Bill of Rights, people should have the right to choose whether they want to handle their case by arbitration or by Court.

II. Arbitration Management Fraud should be punished.

(a) Fraud in organizing the Arbitration Panel

The deadline of submitting the Panel candidate list is Dec. 24, 2001. The Plaintiff selected the Panel list and submitted on Dec. 15, 2001. One day (after Dec. 24, 2001, and before Feb.1, 2002) (In the document I sent to NASD, I mentioned Dec. 26, 2002, however, I might miss remember the exact date) the Plaintiff called Ms. Kelly Davis, asked her whether the Defendant (Respondent) had submit their arbitrator list on time. **Ms. Kelly Davis informed me that NASD had not received the Defendant (Respondent)'s list yet.** And she told me NASD would process on the arbitration panel list anyway without waiting for the Defendant (Respondent)'s list.

If Ms. Kelly Davis' statement is true, then, all the arbitrators should come from the Plaintiff selected arbitrator list. However, when the Plaintiff received the finalized arbitrator list of the Panel from Ms. Suzanne Green, the Plaintiff found that only Mr. Richard D. Jordan (4) was selected as the arbitrator of the Panel.

The Plaintiff called Ms. Suzanne Green to clarify what happened. **Ms. Suzanne Green told me that the Defendant submitted their arbitrator list on Dec. 24, 2001**.

Since the result of the arbitration is critically depended by who is (are) arbitrator(s), the Plaintiff had to file causal challenge to request Ms. Suzanne Green to clarify the timing issue. However, one month passed, Ms. Suzanne Green still unable to clarify this issue.

On a letter that the Plaintiff sent to the President of NASD, the Plaintiff wrote:
"After one month that I asked Ms. Suzanne Green regarding to the Timing Issue on the Defendant's submission of its selected Arbitrator List for the Panel, **Ms. Suzanne Green is still unable to answer my simple question. Hence, I formally propose the investigation request on this issue to NASD Dispute Resolution, Inc.**

If Ms. Suzanne Green was cheating or lying on the Arbitration Job, she should not be qualified as an Arbitration Administrator on this case."

On March 26, 2002, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, replied me a letter. In her letter, **Ms. Clancy provided a third version** of this timing: "Respondent's ranking form was sent to us by facsimile, and received in our office on December 11, 2001, with an original copy arriving on December 12, 2001." People have to ask Ms. Clancy, *December 11, 2001 was far away from December 24, 2001 deadline, overnight delivery is quite enough, why the Defendant send another copy by facsimile besides the overnight delivery? Is this just like an Old Story, "when completed drawing a beautiful picture of a snake, appending legs to that snake"?*

Until now, who was lying, who was cover up, is still a riddle. The Plaintiff strongly believes that Ms. Kelly Davis was telling the truth at that moment. Until now, Ms. Kelly Davis has not lie yet. ***The Plaintiff request Ms. Kelly Davis to testimony on the court.*** If Ms. Kelly Davis could tell the truth on the court, the Plaintiff request the Court protect Ms. Kelly Davis. avoid the revenges from NASD. If she does not tell the truth on the court, then this issue will be covered up. The Plaintiff wonders whether the Court is talent enough to expose the truth.

(b) Fraud on 'Cooking' Hearing Tape

(Forgery is a Criminal Behavior)

The Plaintiff received the hearing tape of the arbitration (NASD No. 01-03697) on Aug. 10, 2002. When the Plaintiff listen to the tape, the Plaintiff

discovered that many content of the arbitration hearing are not in the tape.

On the arbitration, the arbitrators openly bias in favor of the Defendant. For example, when the Plaintiff asked the Defendant to provide detailed case related trade information to the Arbitration Panel. (Without those basic facts, the arbitration will be baseless.) The Arbitrator Chair Richard D. Jordan openly protects the Defendant. He said loudly, "It is trade secret!" However, this statement is erased from the hearing tape.

This is one fact that it proved the arbitration resolution is extremely unfair.

(1) In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives for Reform on Corporate Responsibility", President Bush said:
"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

Erase content from hearing tape is one type of "falsifying records". And this type of forgery hearing tape is a criminal behavior. NASD arbitration administrator Ms. Suzanne Green should be punished on her bad behavior. Her bad behavior has breached the people's trust and abused NASD's power.

(2) On the same speech, President Bush said:
"Self-regulation is important, but it's not enough. Government cannot remove risk from investment -

- I know that -- or chance from the market. But government can do more to promote transparency and ensure that risks are honest. And government can ensure that those who breach the trust of the American people are punished."

The arbitrators helped the Defendant to refuse providing critical case related trade information and to hide the true trade transaction data by claiming "It is Trade Secret". The arbitrators' action and the Defendant's action are strictly against the law, which passed by Congress and Senate. Congress, Senate and President Bush ask to promote transparency. While the arbitrators' action and the Defendant's action are strictly going to the opposite direction. Their actions breached the trust of the American people.

The Plaintiff believes that the court should act now to promote the data transparency and ensure the unfair and un-honest trade fraud is punished.

(3) On the same speech, President Bush said:
"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."

The Plaintiff believes that the Defendant's denying its mistake again, again and again should be seriously punished. When this case re-opened in the court, the minimum punishment should be $1,000,000.00.

However, if the punishment reached or exceeded $1,000,000.00, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.
(b) Promote Reporters, Lawyers and Security Workers to support world peace and justice.
(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.
(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

(4) On the same speech, President Bush said:
"If more scandals are hiding in corporate America, we must find and expose them now, so we can begin rebuilding the confidence of our people and the momentum of our markets."

The Plaintiff believes that it is the time, on this court, to expose the Defendant's trade fraud and NASD's cooking the hearing tape. ***The Plaintiff respectively requests the court:***

(I) ***Order the NASD to provide the true copy of the hearing tape of the arbitration (NASD No. 01-03697) to the Plaintiff and to this court;***

(II) ***Order the Defendant to provide true transaction data (include Order type, Order Date, Order Price, and "whether that order is placed by Market Maker or Broker" appended to the Market Recap) to the Plaintiff and to this court.***

The Plaintiff believes that this court, as one part of the US government, has the guts and power to make the above orders.

III. The Arbitration Award should be vacated. This case should be handled in the court with Juries.

According to Judge Young's statement on July 2, 2001, the Plaintiff seriously went through the arbitration with the Defendant from July 26, 2001 to July 20, 2002. As predict, due to the conflict interest, NASD was unable to fairly make item-by-item judgment on this case.

(a) Justice judgment should base on fair examination of facts.

The Defendant rejected to provide the case related critical information again and again. I wonder, without that critical information, how the arbitrators can make any right decision. The Defendant claims that: Market orders receive execution priority (See Respondent's amended statement of answer, page 3, line 7). However, the Defendant failed to prove that all the sell orders of those 170 transactions are Market orders. And as long as one sell order of those 170 transactions is NOT Market order, the Defendant's argument is automatically defeated. ***According to statistics theory, it is almost impossible that all the sell orders of those 170 transactions are Market orders.*** If the arbitrators understand statistics theory,

they can reach the conclusion immediately that the Defendant is lying and the Defendant is responsible for the failure to execute the Plaintiff's order. If the arbitrators don't understand the statistics theory, then they should ask the Defendant to provide detailed information about the order type of the sell orders of those 170 transactions to get the right conclusion. With unfair arbitration, the Defendant has not provided the case related critical information until today. ***The Plaintiff strongly requests the Court compel the Defendant to provide the critical case related document requested by the Plaintiff in the Plaintiff's "First Request For Document and Information to Defendant".***

(b) Justice judgment should base on the principle of "All People are created equal".

However, the Defendant openly requested the arbitration panel to dismiss this case by race prejudice. And the result is just as the Defendant's willing. The three arbitrators dismissed the Plaintiff's claim in the entirety without any reasoning:
Count (8) which is directly associated with NASD was untouched;
The Defendant's failure to execute customer's order was not punished;
The Defendant's cheating and insulting customer was not punished;
The Defendant's cheating SEC was not punished;
The Defendant's lying under the oath were not punished;
The Defendant failed to provide case related critical information was not punished;

The Defendant's invading the Plaintiff's privacy was not punished;
In general, the Defendant successfully escaped from the justice judgment in the arbitration hearing due to the conflict interest.

(c) Fairness should be the basic principle for stock trading

"First come, first serve" should be one of the basic rules for stock trading. The Plaintiff asked many experts on stock trading (include some arbitrators and lawyers) the following question:
"If there are 10 same limit orders to sell 5000 shares stock XYZ at price $2.00, Person A placed order on Feb. 23, 2000, while others placed the same order on March 7, 2000. When Market bid price exceeded $2.00, which order should be executed first?" **All the answer are same: "Person A's order should be executed first because that order placed first."**

Mr. William Young challenging this basic stock-trading rule on the hearing of Feb 6, 2003 is incorrect.

(d) Arbitration Result is NOT always correct

Mr. William Young claimed, "Arbitration is second-class justice" (Feb 6, 2003, Motion Hearing Transcript, Page 10, Line 25). According to this assumption, Mr. William Young blindly confirmed the Arbitration award. Now, I start to understand why Ms. Suzanne Green dares to forge the Arbitration Panel. Now, I start to understand why Ms. Suzanne Green dares to "cook" the Hearing Tape. Now, I start to understand why the Arbitrators dare to help the

Defendant to hide the unfair trading Data. It is because they have the "Umbrella" of "Arbitration is second-class justice". With this "Umbrella", No matter how many criminal actions they did, no one will punish them! However, people have to ask Mr. William Young: If you do not work hard to investigate each case, if you do not have talent to distinguish who is good, who is bad, who did criminal actions, if you do not uphold justice, do not punish the criminal actions, why people need to you? People need you is because Arbitration Result is NOT always correct, especially there is conflict interests involved. Unfair Arbitration result should be corrected by the Court. If our Mr. William Young does not correct those Arbitration Mistakes, then, our Mr. William Young is neglecting his duties.

According to our Mr. William Young's logic, then, the civil court will be the "first justice". Hence, our Mr. William Young will be always right since he is the chief Judge in this court. Hence, there will be no need to have Appeal Court and Supreme Court. Fortunately, US People do not trust our Mr. William Young's logic. Mr. William Young might make mistakes. Mr. William Young's mistakes should be corrected by the Appeal Court and/or Supreme Court. Anyone should obey the law. Ms. Suzanne Green's Arbitration Management fraud should be punished. TD Water House's trade fraud should be punished.

IV. Mr. William Young should study new law and uphold the new law.

Congress and Senate worked very hard to pass the new law on "Tough New Enforcement Initiatives for Reform on Corporate Responsibility". The president of USA signed this new law and uses different opportunities to explain the new law to the people. Should Mr. William Young study hard about this new law? Should the Supreme Court of the United States request Mr. William Young to uphold this new law? If our judge Young does not study the new law, ignore those criminal behaviors which violating the new law passed by Congress and Senate, does not punish those criminal behaviors, should he think about whether he neglected his duty?

CONCLUSION OF THE BRIEF

(I) It is a mistake that Mr. William Young ignored that there were conflict interests if this case handled by NASD arbitration, and denied the Plaintiff's Motions of request to handle this case in the District Court. Conflict interests should be avoided. This case should be handled by the Federal District Court.

(II) It is a mistake that Mr. William Young ignored that due to the conflict interests, the NASD fraudulently managed this arbitration, and confirmed the arbitration award. Mr. William Young should study the new law passed by the Congress and the Senate, signed by the President. Mr. William Young should be bound to uphold this new law. The Arbitration Management Fraud should be punished. The Arbitration Award should be vacated.

(III) NASD's Arbitration Management Fraud should be punished. The minimum punishment should be $1,000,000.00.

(IV) The Defendant (TD Water House Investor Service, Inc)'s Trade fraud, followed by its cheating customer, insult customer, cheating SEC, lie under OATH, etc should be punished. The minimum punishment should be $1,000,000.00.

(V) If the total punishment exceeded $1,000,000.00, as Promised, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Security Workers, Lawyers and Judges to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

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APPENDICES 2

Appeal Nos. 03-1415; 03-1478

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

DE SHEN

Plaintiff - Appellant\Cross - Appellee

v.

T.D. WATERHOUSE INVESTOR SERVICES, INC.

Defendant - Appellee\Cross - Appellant

Appeal from the United States District Court
for the District of Massachusetts in Civil Action
00-11190WGY

BRIEF FOR DEFENDANT - APPELLEE\CROSS - APPELLANT

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CORPORATE DISCLOSURE STATEMENT

T.D. Waterhouse Investor Services, Inc. hereby states that its parent corporation is T.D. Waterhouse Group, Inc. and that there are no publicly held corporations that own 10% or more of its stock.

Dated: July 28, 2003

Pete S. Michaels
Attorney for Defendant - Appellee
Cross - Appellant
Court of Appeals Bar Number 9105
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JURISDICTIONAL STATEMENT

A. The District Court had subject matter jurisdiction of this matter pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 78aa and 9 U.S.C. § 9. De Shen brought claims under the federal securities laws. *See,* 15 U.S.C. § 78a *et seq*. TD Waterhouse sought confirmation of the arbitration award under the Federal Arbitration Act and De Shen sought to vacate the arbitration award under the Federal Arbitration Act.

B. The First Circuit Court of Appeals has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

A judgment that disposed of all claims with respect to all parties was signed on February 27, 2003 and docketed that day. A notice of appeal was filed on March 24, 2003. A notice of cross-appeal was filed on April 3, 2003.

ISSUES PRESENTED FOR REVIEW BY TD WATERHOUSE IN ITS CROSS APPEAL

1. Did the District Court err in holding that De Shen's Motion to Re-open the case constituted a Motion to Vacate the arbitration award and therefore that De Shen had filed the Motion to Vacate within the three (3) month period required by the Federal Arbitration Act.

STATEMENT OF THE CASE

Plaintiff - Appellant\Cross - Appellee De Shen (hereinafter "De Shen" or "Appellant") filed a complaint for "trade fraud" against Defendant - Appellee\Cross - Appellant TD Waterhouse Investor Services, Inc. (hereinafter "TD Waterhouse" or "Appellee") in federal

court on June 4, 2000. TD Waterhouse moved the District Court to compel arbitration and stay litigation on July 12, 2000. The District Court ordered that this case be arbitrated, and stayed the federal court litigation on July 17, 2000.

De Shen filed a Statement of Claim in arbitration on August 23, 2001. *See, Appellant's Appendix*, Tab 8. TD Waterhouse filed its Statement of Answer on November 7, 2001. *See, Appellee's Appendix*, Tab 1. De Shen filed an Amended Statement of Claim in arbitration on March 28, 2002. *See, Appellant's Appendix*, Tab 11. TD Waterhouse filed an Amended Statement of Answer on June 19, 2002. *See, Appellee's Appendix*, Tab 2. De Shen's claims against TD Waterhouse were considered at arbitration before the National Association of Securities Dealers, Inc. ("NASD") on June 20 and 21, 2002. A panel of three arbitrators dismissed De Shen's claims in their

entirety in an Award dated July 18, 2002. *See,*

***Appellant's Appendix*, Tab 14.**

De Shen wrote the District Court on August 16, 2002, requesting that the case be re-opened and submitted a Motion to Re-open the case. *See, Appellant's Appendix*, Tabs 17, 18. The District Court treated that motion as a Motion for Reconsideration and denied it on September 6, 2002. *See, Appellant's Appendix*, Tab 20. De Shen then filed a Motion to Request Vacation of the Arbitration Award (referred to throughout this Appellee's Brief as "Motion to Vacate") with the District Court on December 16, 2002. *See, Appellant's Appendix*, Tab 25. TD Waterhouse objected to the Motion to Vacate and filed its own Motion to Confirm the Arbitration Award (hereinafter "Motion to Confirm") on December 30, 2002. *See, Appellee's Appendix*, Tab 3. The District Court denied De Shen's Motion to Vacate and allowed TD Waterhouse's Motion to Confirm on February 27, 2003. The cross appeals now before this Court followed.

STATEMENT OF FACTS

Once this case proceeded to arbitration under the rules of the NASD, the parties selected arbitrators pursuant to NASD Dispute Resolution ("NASD DR") Rule 10308. *See, Appellee's Appendix*, Tab 4. TD Waterhouse submitted its ranking of potential arbitrators within the time allowed by NASD DR rules. *Id.*

Pursuant to NASD DR rules, De Shen filed a Request for Production of Documents to TD Waterhouse with the NASD on November 25, 2001. *See, Appellee's Appendix,* Tab 5. De Shen did not serve the Request for Production of Documents to TD Waterhouse until March 4, 2002. *See, Appellee's Appendix,* Tab 6. TD Waterhouse responded to De Shen's Request for Production of Documents on April 3, 2002. *See Appellee's Appendix,* Tab 7.

On April 14, 2002, De Shen filed a Motion to Amend his Statement of Claim in Arbitration. *See, Appellee's Appendix,* Tab 8. TD Waterhouse objected to the Motion to Amend on April 26, 2002, and argued that the proposed new claims did nothing more than attack counsel and raise discovery issues. *See, Appellee's Appendix,* Tab 9. The arbitration panel allowed De Shen's Motion to amend over TD Waterhouse's objections. *See, Appellee's Appendix,* Tab 10. The Amended Statement of Claim included a claim that TD Waterhouse failed to produce documents that De Shen believed were relevant (and to which TD Waterhouse had timely filed objections). *See, Appellant's Appendix*, Tab 11. The arbitration panel also ordered that the arbitration proceed despite the fact that De Shen had not produced <u>any</u> documents to TD Waterhouse in discovery. *See, Appellee's Appendix,* Tab 11.

At the arbitration, the Panel heard all of the evidence presented by both parties. The arbitrators also considered and ruled on evidentiary issues raised by the parties. Subsequent to the arbitration, De Shen obtained copies of the hearing tapes, which recorded the arbitration proceedings. (The NASD preserves the hearing record on those cassette tapes). De Shen complained to the NASD that he did not receive all of the tapes (De Shen received three (3) tapes and claims that

four (4) existed) and that some of the contents of the hearing were missing from the tapes. *See, Appellee's Appendix,* Tab 12. The NASD notified De Shen on August 14, 2002 that "there were a total of three (3) tapes used to record the hearing on the merits" and that the NASD had provided De Shen with an "exact" copy of the tapes. *Id.*

SUMMARY OF ARGUMENT

The District Court erred as a matter of law when it ruled that De Shen's Motion to Re-open the case constituted a Motion to Vacate ("Motion") which, in effect, tolled the three (3) month deadline for De Shen to file and serve the Motion on TD Waterhouse under Section 10 of the Federal Arbitration Act. De Shen's failure to file his Motion and notify TD Waterhouse of the Motion within the three-month period provided for in the Federal Arbitration Act precluded the District Court's consideration of the Motion.

De Shen contests the validity of the arbitration award on many fronts and seeks to have the award vacated under Section 10 of the Federal Arbitration Act. Many of the issues raised by De Shen are untimely. Further, De Shen fails to meet his burden with respect to those issues that are timely. Under Section 10 of the Federal Arbitration Act, De Shen fails to show that TD Waterhouse obtained

the arbitration award through fraud or corruption; that there was evident partiality or corruption in the arbitrators; or, that the arbitrators refused to hear evidence pertinent and material to the controversy. This Court should affirm the decision of the District Court denying De Shen's Motion to vacate and allowing TD Waterhouse's Motion to Confirm.

ARGUMENT

. De Shen failed to file the Motion to Vacate within the time allowed by law.

This Court reviews questions of law *de novo*. *See, Arecibo Community Health Care, Inc. v. Commonwealth of Puerto Rico*, 270 F.3d 17, 22 (1st Cir. 2001). Section 12 of the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.* ("FAA") states:

> Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney *within three months after the award is filed or delivered...*

9 U.S.C. § 12 (emphasis added). The NASD Award dismissing De Shen's claims in their entirety was filed and delivered on July 18, 2002. *See, Appellant's Appendix*, Tab

14. De Shen filed the Motion to Vacate on December 16, 2002 (*see, Appellant's Appendix*, Tab 25); nearly five-months after the NASD filed and delivered the Award and well past the three-month deadline imposed by the Federal Arbitration Act.

The federal cases are uniform in holding that a party's failure to file a motion to vacate within the time prescribed by the FAA precludes a district court from considering the motion. *See, Witt v. Reinholdt & Gardner*, 587 F. 2d 383, 384 (8th Cir. Mo., 1978) (failure to give notice of motion to vacate, modify, or correct award pursuant to 9 U.S.C. § 12 will justify dismissal of action); *see also, Piccolo v. Dain, Kalman & Quail, Inc.*, 641 F.2d 598, 600 (8th Cir., Neb. 1981) (party to arbitration award who fails to comply with statutory precondition of timely service of notice forfeits right to judicial review of award; thus, District Court properly determined that customers' failure to serve their complaint on broker or its attorney within three months of

arbitration award in favor of broker deprived it of power to review award); *Sanders-Midwest, Inc. v. Midwest Pipe Fabricators, Inc.*, 857 F.2d 1235, 1237 (8th Cir., Mo., 1988) (District Court was barred from considering application to vacate arbitration award because party applying to vacate award failed to give notice of its objections to award within three months after award was filed; furthermore, no exceptions to time for service of notice appear in Federal Act, and rule applies to claims challenging partiality of arbitrator).

In this Circuit, the District Court for the District of Puerto Rico has held that an action seeking to overturn an arbitration award in favor of a securities brokerage would be dismissed for untimeliness, even though the plaintiff filed the action within three months of notification of the arbitration award, because the plaintiff failed to serve notice of the action on the brokerage firm within the three month period under the FAA. *See, Franco v. Prudential Bache Securities, Inc.*, 719 F.Supp. 63, 64 (D. Puerto Rico, 1989). *Franco* is distinguishable from the present case as De Shen failed to file his Motion to Vacate within the three-month period.

De Shen may not toll the three-month limitations period of Section 12 of the FAA through his filing of the Motion to "Re-open" the case on August 17, 2002. De Shen

argued, and the District Court agreed, that that motion constitutes a motion to vacate. The District Court held that the Motion to Vacate should relate back to the filing date of the August 17, 2002 Motion to "Re-open". *See, Appellant's Appendix,* Tab 25, p. 6.

The District Court, however, had denied the August 17, 2002 Motion to "Re-open" by Order dated September 6, 2002. In the District Court's Order, the Court stated that it was treating Plaintiff's Motion to "Re-open" as a motion for reconsideration of the Arbitration Award. *See, Appellant's Appendix*, Tab 20. Plaintiff never appealed the District Court's September 6, 2002 Order. The District Court cited no authority supporting its conclusion that De Shen's filing of the motion to re-open should toll the three-month deadline of Section 12 of the FAA. The overwhelming weight of authority compels just the opposite result.

The three-month deadline found in Section 12 of the FAA acts as a statute of limitations. *See, Foster v. Turley,* 808 F. 2d 38, 41 (10th Cir. 1986). In a case mirroring the facts

before this Court, the Western District of Missouri denied as untimely a Motion to Vacate an arbitration award, where it was served on the adverse party more than 4 months after the parties received notice of the arbitration panel's decision, and time was not tolled by a separate request to reopen the arbitration, nor did the motion relate back to a motion for an order staying confirmation of the arbitration award, filed within the 3-month period. *See, McClelland v. Azrilyan,* 31 F.Supp. 2d 707, 709-712 (W. D. Mo. 1998). The *McClelland* court noted that the Federal Arbitration Act does not provide for any statutory exceptions to the three-month service requirement. *Id.* at 710. *McClelland* is in accord with other courts that have considered this issue. *See, Taylor v. Nelson,* 788 F. 2d 220, 225 (4th Cir. 1986) (the existence of a tolling exception is questionable for it is not implicit in the language of the statute and cannot be described as a common law exception).

The District Court's decision tolling the three-month limitations period of Section 12 of the FAA should be reversed as a matter of law. De Shen's failure to file his Motion to Vacate and notify TD Waterhouse of the Motion within the three-month period provided for in the Federal Arbitration Act precluded the District Court's consideration of the Motion.

II. The District Court properly stayed proceedings in federal court, ordering arbitration under the rules of the National Association of Securities Dealers ("NASD").

This Court reviews the District Court's Order staying federal court litigation and compelling arbitration as it would any other decision finding an agreement between the parties;

the Court should accept findings of fact that are not "clearly erroneous" and decide questions of law *de novo*. *See, First Options of Chicago, Inc. v. Manuel Kaplan, et ux. and MK Investments, Inc.*, 514 U.S. 938, 947-948, 115 S. Ct. 1920 (1995).

It is well settled that under Section 2 of the FAA, a written agreement to arbitrate contained in any "contract evidencing a transaction involving commerce…shall be valid, irrevocable and enforceable." The Supreme Court has explained "[t]he effect of the section is to create a body of federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the [FAA]." *See, Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24, 103 S. Ct. 927 (1983).

A party's agreement to arbitrate is a matter of contract law. *See, AT&T Technologies, Inc. v. Communication Workers of America*, 475 U.S. 643, 649, 106 S. Ct. 1415

(1986); *The Newspaper Guild of Salem v. Ottaway*

Newspapers, Inc.,

79 F. 3d 1273, 1279 (1st Cir. 1996). The FAA provides that, as soon as a court is satisfied as to the existence of an arbitrable dispute, it "shall" do two things: (1) compel the parties to arbitrate that dispute in accordance with the applicable provisions of their agreement; and (2) stay further litigation as to arbitrable claims. *See,* 9 U.S.C. §§ 3, 4. "By its terms, the [FAA] leaves no place for the exercise of discretion…but instead mandates that…courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed. *See, Dean Witter Reynolds Inc. v. Byrd,* 470 U.S. 213, 218, 105 S. Ct. 1238 (1985). In considering these factors, courts are guided by the principal that there is a "strong," "widely recognized" federal policy in favor of arbitration. *See, Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226, 107 S. Ct. 2332 (1987); *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer,* 29 F.3d 727, 730-31 (1st Cir. 1994) (and the cases cited therein).

De Shen was bound by his TD Waterhouse new account application, which required him to arbitrate this dispute. *See, Appellee's Appendix,* Tab 13. The new account application constitutes a contract "evidencing a transaction involving commerce," as defined under the FAA. *See,* 9 U.S.C. § 2. The District Court properly stayed proceedings in federal court, ordering the parties to arbitration.

De Shen argues that the Bill of Rights affords him the right to choose whether this case proceeds in court or in arbitration. De Shen offers no authority, other than his reference to the right to "freedom of speech," to support this assertion. De Shen's assertion fails as a matter of law.

III. The District Court correctly denied De Shen's Motion to Vacate on the merits.

A. Standard of Review

A federal court is empowered to vacate an arbitrator's award only on grounds specified in 9 U.S.C. § 10, and courts are precluded from considering factual or legal issues which are by voluntary agreement made subject of arbitration; judicial intrusion is restricted to extraordinary situations indicating abuse of an arbitrator's power or the exercise of power beyond the jurisdiction of an arbitrator. *See, Mobil Oil Corp. v. Oil, Chemical & Atomic Workers Int'l Union*, 600 F.2d 322, 326 (1st Cir. 1979). This Court's review of the district court's ruling on an arbitration award is *de novo*. *See, Wonderland Greyhound Park, Inc. v. Westwood Group Inc.*, 274 F.3d 34, 35 (1st Cir. 2001). Judicial review of the arbitrator's decision is extremely narrow and exceedingly deferential. *Id.* An arbitrator's award must be enforced if it is in any way plausible, even if the Court thinks the arbitrator committed serious error. *Id.* An arbitrator's factual findings are generally not open to judicial challenge. *Id.* at 36-37.

B. Section 10 of the FAA

Section 10 of the FAA provides that a court may vacate an arbitration award in the following circumstances:

> (20611) where the award was procured by corruption, fraud, or undue means;
>
> (20612) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> **(20613)** where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other

misbehavior by which the rights of any party have been prejudiced; or

(20614) where the arbitrators exceed their powers, or so imperfectly exercised them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10. De Shen's appeal, arguably, implicates the first three circumstances.

C. TD Waterhouse did not obtain the arbitration award by corruption, fraud, or undue means.

De Shen argues that the District Court should have vacated the arbitration award because of "arbitration management fraud." De Shen's brief complains of two (2) such "arbitration management frauds": (1) fraud in organizing the arbitration panel, and (2) fraud in "cooking hearing tape."

De Shen must establish fraud by clear and convincing evidence and must show that the fraud materially related to an issue in arbitration. *See, LaFarge Conseils Et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1339 (9th Cir. 1986) (citing *Dogherra v. Safeway Stores, Inc.*, 679 F.2d

1293 (9th Cir. 1982) *cert den.*, 459 U.S. 990, 74 L.Ed.2d 386, 103 S.Ct. 346 (1982)); *see also Bonar v. Dean Witter Reynolds, Inc.*, 835 F.2d 1378, 1383 (11th Cir. 1988) (citing *Dogherra, supra).*

Under these standards, De Shen cannot show that TD Waterhouse obtained the arbitration award by corruption or fraud. De Shen has not offered clear and convincing evidence that the arbitration award was obtained by fraud. The record clearly supports the fact that the arbitration panel was selected under the rules of the NASD DR. *See, Appellee's Appendix*, Tab 4. The record also clearly supports the fact that De Shen was provided with an "exact" copy of the hearing tapes. *See, Appellee's Appendix*, Tab 12. De Shen only offers unsubstantiated assertions to the contrary. Additionally, De Shen cannot maintain that either of these alleged "frauds" materially related to an issue in arbitration. *See, LaFarge Conseils Et Etudes, S.A.*, 791 F.2d at 1339. Both of the alleged "frauds" complained of by De Shen are procedural in nature and do not relate to any of the issues raised by De Shen in his Statement of Claim or Amended Statement of Claim. De Shen has not and cannot argue that TD Waterhouse acted fraudulently in regards to any issue raised by him at the arbitration.

De Shen does not meet his burden of proof and has not shown by clear and convincing evidence that TD Waterhouse obtained the arbitration award by fraud or corruption.

D. The arbitrators displayed no evident partiality or corruption.

De Shen argues that the arbitration panel was not fit to hear this case in arbitration because Count 8 of De Shen's Amended Statement of Claim implicated a potential conflict

of interest for the NASD. *See, Appellant's Brief*, p. 9. Count 8 of De shen's Amended Statement of Claim raises questions about T.D. Watehouse's objections to De Shen's discovery requests. *See Appellant's Appendix*, Tab 11. The arbitration panel specifically considered this Count in its decision. *See Appellant's Appendix*, Tab 14.

The FAA authorizes a court to vacate an arbitration award where there was evident partiality or corruption in the arbitrator. *See, Kiewit/Atkinson/Kenny v. International Brotherhood of Electrical Workers, Local 103, AFL-CIO*, 76 F. Supp.2d 77, 79 (D. Mass. 1999) (citing 9 U.S.C. § 10(a)(2)). Evident partiality, however, means more than just an appearance of bias. *Id.* (citing *Florasynth, Inc. v. Pickolz*, 750 F.2d 171, 173 (2nd Cir. 1984)). The burden is on the moving party to provide evidence of bias sufficient for a reasonable person to conclude that an arbitrator was partial to the other party to the arbitration. *Id.* (citing *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 991 F.2d 141, 146 (4th Cir. 1993)).

De Shen offers no evidence that the arbitration panel was partial to TD Waterhouse. De Shen argues that the NASD was conflicted because Count 8 of the Amended Statement of Claim somehow implicates the NASD. The NASD was never a party to these proceedings. Furthermore, De Shen's allegations are merely assertions and find no support in the record. De Shen incorrectly concludes that the NASD is conflicted because of the arbitration panel's evidentiary ruling. No reasonable person could conclude that the arbitration panel was partial to TD

Waterhouse from the record before this Court. De Shen fails to meet his burden to show that there was evident partiality or corruption in the arbitrators.

E. The arbitrators did not refuse to hear evidence pertinent and material to the controversy.

De Shen argues that the arbitration panel impermissibly denied his request for "case related critical data". *See, Appellant's Brief,* p. 4. De Shen refers to his request for "all the documents and information about the orders related to all the 137 transactions on PTUS (the stock at issue in the Statement of Claim and the Amended Statement of Claim), which were executed between 10:23:39 to 12:04:28 of March 7, 2000." *See, Appellee's Appendix,* Tab 5. TD Waterhouse objected to that request. *See, Appellee's Appendix,* Tab 7. De Shen also complains that the arbitration panel did not rule on "every item in the Plaintiff's Statement of Claim" and did not offer any reasoning for the Panel's conclusions. *See, Appellant's Brief,* p. 6.

At the arbitration, TD Waterhouse offered testimony regarding the transactions referred to by De Shen in his discovery requests and the substance of De Shen's Statement of Claim and Amended Statement of Claim generally. The

arbitrators also addressed all evidentiary issues raised by the parties.

Arbitrators are not bound by rules of evidence and may draw on their personal knowledge in rendering an award. *See, Bernhardt v. Polygraphic Co. of America,* 350 U.S. 198, 204, 100 L.Ed. 199, 76 S.Ct. 273 (1956). Arbitrators need not disclose facts or reasons behind an arbitration award. *Id.* An arbitrator's conclusions on procedural matters may be vacated only where an award demonstrates a manifest disregard of law or where the award is irrational; judicial review is limited by the rule of deference where procedural questions are intertwined with the merits of a dispute and court review would result in serious delay and duplication of effort. *See, e.g., Stroh Container Co. v. Delphi Industries, Inc.,* 783 F.2d 743, 749-750 (8th Cir. 1986) *cert den.,* 476 U.S. 1141, 106 S.Ct. 2249 (1986).

De Shen has offered no proof that the arbitration panel refused to hear evidence pertinent and material to the controversy. In fact, the truth is that the Panel did all it could to ensure that De Shen had a full opportunity to present his case. For example, the Panel allowed the arbitration to go forward despite the fact that De Shen had produced no documents whatsoever to TD Waterhouse. *See, Appellee's Appendix,* Tab 11. The Panel allowed De Shen to amend his Statement of Claim to include potentially defamatory claims assailing the veracity of counsel and raising procedural issues, which should have properly been the subject of a Motion to Compel. *See, Appellant's Appendix, Tab 11* and *Appellee's Appendix,* Tab 9. In addition, the Panel allowed De Shen to present evidence on all of the issues raised in his Statement of Claim and Amended Statement of Claim. The Panel heard all of testimony offered by the parties, which specifically included testimony regarding "137 transactions

on PTUS, which were executed between 10:23:39 to 12:04:28 of March 7, 2000".

The Panel did rule on evidentiary issues. The Panel's decisions on those issues should be afforded the greatest deference by this Court. The Panel also ruled on all issues raised by De Shen in his Statement of Claim and Amended Statement of Claim. The Panel was entitled to render a decision without providing the parties with its reasoning. De Shen fails to meet his burden to show that the Panel refused to hear evidence pertinent and material to the controversy.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, TD Waterhouse respectfully requests that the judgment of the District Court denying De Shen's Motion to vacate and allowing TD Waterhouse's Motion to Confirm should be affirmed.

Dated: July 28, 2003

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APPENDICES 3

UNITED STATES COURT OF APPEALS
FIRST CIRCUIT

No. 03-1415, No. 03-1478

Plaintiff and Appellant: De Shen	)	
	)	Trade Fraud on March 7, 2000.
VS.	)	Civil Action No. 00-11190-WGY
Defendant and Appellee: TD Waterhouse Investor Service, Inc)	)	Appeal Nos. 03-1415, 03-1478

Aug. 25, 2003

REPLY BRIEF OF PLAINTIFF
(Appellant\Cross-Appellee)

On appeal from U.S. District Court, District of Massachusetts

APPEARANCES:

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JURISDICTIONAL STATEMENT

Bill of Right should be applied.
All people are created equal.
Pursuant to 15 U.S.C.A. §78a, Fairness is the Basic principle of stock trading.
According to FAA Section 10, the Arbitration award should be vacated. This case should be reopened on the Court with Juries.

STATEMENT OF THE ISSUES

1. Did Mr. William Young err in knowing there were some conflict interests, but still ordering this case to be judged by arbitration? (See Addendum 02)

2. Did Mr. William Young err in knowing due to conflict interests, there were Arbitration Management Frauds during the arbitration, but not investigating and punishing the Arbitration Management Fraud? (See Addendum 03, 07, 08, 09)

3. Did Mr. William Young err in knowing due to the conflict interests, there were Arbitration Management Frauds, and the Arbitrators did not make fair arbitration, but still confirming the Arbitration Award? (See Addendum 07, 08)

4. Did Mr. William Young err in against the common sense, against 15 U.S.C.A. §78a, denying that the securities trading should be fair, and 'First come, first serve' should be one of the basic criteria for the trading fairness? (See Addendum 07)

5. Did Mr. William Young err in knowing that the judgment should be based on facts, but denying the Plaintiff compel the Defendant to present case related critical data to the Court? (See Addendum 04)

6. Did Mr. William Young err in denying having a hearing in Oct. 7, 2002's Court ruling? Did Mr. William Young err in denying providing reasoning for his ruling in the Oct. 20, 2002's Court ruling? (See Addendum 05, 06)

7. Did Mr. William Young err in denying the Plaintiff's motion to 'Request Ms. Kelly Davis To Testimony on the Court'? (See Addendum 09)

8. Did Mr. William Young err in denying the Plaintiff's motion to 'To Add NASD Dispute Resolution, Inc to Defendant List of This Case'? (See Addendum 09)

9. This case is so simple, so obvious, however, the Arbitration made a wrong arbitration conclusion, Mr. William Young confirmed this wrong arbitration result. Is there any factors of 'race discrimination against Asia American' influenced this case?

10. Should Mr. William Young uphold the US Constitution? Should the lawyer of the Defendant, who denying the US Constitution, be punished? Should Mr. William Young study the new law passed by Congress and Senate, signed by President, and uphold those new laws? (See Addendum 07, Appendix 33)

11. Should NASD Arbitration Administer Ms. Green who conducted two Arbitration Management Frauds be punished?

12. Should the Defendant and its lawyer's lying under the Oath be punished?

13. Should the Defendant preventing its customers to present case related Market Data to judges and Courts be punished?

14. Should the Defendant's trade fraud be punished?

15. Should the Defendant cheating and insulting customer be punished?

16. Should the Defendant cheating SEC be punished?

17. Should the Defendant failed to provide case related critical information be punished?

18. Should the Defendant's hiring lawyer to invade the Plaintiff's privacy be punished?

STATEMENT OF THE CASE

In this case, the Plaintiff exposed the Defendant's trade fraud, the arbitration management fraud, the arbitration panel's unfair judgment, and the Mr. William Young's misjudgment.
The Plaintiff once said, "I am holding a great flag, a flag of justice; a flag of fair; a flag of 'All people are created equal'" (See Appendix 12). The Plaintiff hopes that our judges should uphold the same flag.

STATEMENT OF THE FACTS

On March 7, 2000, a trade fraud happened. The Market Recap (See Appendix 01) of March 7, 2000 had clearly indicated that it is the Defendant's mistake. After many times phone calls between the Plaintiff and the Defendant, the Defendant did not commit its mistake. Hence, a law suite was filed (See Appendix 05) under the suggestion of the lawyer of the week of the Framingham Court. The Defendant requested to handle this case by arbitration. However, the Plaintiff believe that the customers have the freedom right to choose whether to solve this case by arbitration or by court according to the Bill Of Right. Judge Young held a conference with the Plaintiff and

the Defendant. The judge informed both sides that this case should go through arbitration first. However, if the Plaintiff feels that the result is not proper, or there is any item cannot be arbitrated, the judge would like to continue handling this case on the court.

When the Plaintiff preparing for the Arbitration Claim, the Plaintiff found that there is one issue, which will conduct the conflict interest if this case handled by Arbitration. On Feb. 3, 2001, the Plaintiff filed a motion, inform the Court that there is a conflict interest issue if this case handled by NASD arbitration (See Appendix 03, 06). In this motion, the Plaintiff requested this case should be handled by the District Court according to the Bill Of Right. However, the Court denied this motion (See Appendix 07). The Plaintiff believes this ruling was incorrect. It is violated the Constitution.

Although the Plaintiff worried about that there might be some conflict interests issues by going through the arbitration, the Plaintiff decided to follow the judge's order to seriously go through the arbitration first. The Arbitration Statement of Claim was submitted on July 26, 2001 (See Appendix 08). The arbitration hearing held on June 20, 2002.

As predicted, due to the conflict interest, **the arbitration management frauds happened**, and the award of arbitration is extremely unfair (See Appendix 09, 10, 14). It unfairly dismissed the Plaintiff's claim in the entirety. **Every item in the Plaintiff's Statement of Claim was not be arbitrated! There is no any conclusion from the arbitrators on each item of the Plaintiff's**

Statement of Claim. Of cause, there is no any reasoning on how to get those conclusions!
Count (8) which is directly associated with NASD was untouched;
The Defendant's failure to execute customer's order was not punished;
The Defendant's cheating and insulting customer was not punished;
The Defendant's cheating SEC was not punished;
The Defendant's lying under the oath was not punished.

Due to the conflict interests, when organizing the arbitration panel, the arbitration administrator forged the arbitration panel. After the arbitration, the arbitration administrator modified the hearing tape.

Considering that Mr. William Young promised that if the arbitrators do not arbitrate some of the items in the Plaintiff's Complaint, the Plaintiff could come back to the Court (See Appendix 04), the Plaintiff submitted a motion to request to re-open this case in the District Court on Aug. 17, 2002 (See Appendix 17, 18). In this motion and the cover letter, the Plaintiff reported the unfair arbitration result, including that many items are not arbitrated at all. The Plaintiff also reported the Arbitration Management Frauds to the Court. However, **Mr. William Young broken his promise**, and denied this motion (See Appendix 04, 07, and 20).

Considering that Judgment should base on facts instead of prejudice, the entire arbitration is baseless since until now the Defendant has not submitted the case related critical trading data yet. Hence, the

Plaintiff submitted a motion to "Compel The Production Of Documents" on Aug. 29, 2002(See Appendix 19). However, Mr. William Young ignored that the fact that due to Conflict Interests, the arbitration result is extremely unfair, and denied the Plaintiff's motion (See Appendix 21).

Considering that the Court denied the Plaintiff's motions might be all based on a wrong assumption that the arbitration conducted a fair resolution. The Plaintiff submitted the third motion (See Appendix 22) on Sep. 29, 2002 to request a hearing, so that the Plaintiff can explain to the Court why the arbitration result is extremely unfair. A good judge should listen to the people. However, Mr. William Young even denied this basic requirement on Oct. 7, 2002 (See Appendix 23).

The Plaintiff was really surprised about Mr. William Young's ruling on Oct. 7, 2002. Hence, the Plaintiff submitted a motion to "Requesting the reason of court ruling on Oct. 7, 2002" (See Appendix 24). Unfortunately, the Plaintiff even cannot get the reasoning from the court. Mr. William Young was even unable to provide any reasoning (i.e. according to which law(s)) about his ruling (See Appendix 25).

The Plaintiff has to request the Transcript of the conference of Nov. 14, 2000, on which, Mr. William Young promised to the Plaintiff that the Plaintiff can come back to Court if the arbitration result is unfair or some items in the Complaint are not arbitrated. On Nov. 4, 2002, the Plaintiff received a copy of the Transcript (See Appendix 04).

Since the arbitration administrator edited the arbitration hearing tapes and denied to provide a true copy of arbitration hearing tapes. The Plaintiff submitted a motion to "Compel NASD to Provide True Copy Of Hearing Tape Of Case 01-03697" on Nov. 16, 2002 (See Appendix 26). The original hearing tapes are four tapes according to Ms. Green. The edited tapes are three tapes (See Appendix 16). However, Mr. William Young even denied punishing the arbitration administrator's criminal actions. The Plaintiff's motion was denied.

According to Mr. William Young's word on the deny letter, the Plaintiff submitted a motion to "Request Vacation of the Arbitration Award on Case NASD No. 01-03697" (See Appendix 27). Finally, Mr. William Young agreed to have a hearing on this issue. The Plaintiff saw a glimpse of hope that the justice might be fulfilled on this case by the hearing. The hearing was held on Feb 6, 2003.

Unfortunately, Mr. William Young did not make a fair judgment on this hearing (See Appendix 28). (1) Mr. William Young claimed this case is "a serious one". However, Mr. William Young did not handle this case seriously. Mr. William Young did not investigate the arbitration management frauds. Also, he did not investigate on the trade fraud. Judgment should be based on the fact; however, Mr. William Young did not request the Defendant providing the case related critical data. (2) Mr. William Young ignored the arbitration management fraud on forging the arbitration panel list, claimed, "If you get a biased arbitrator, they won." (3) Mr. William Young ignored the arbitration management fraud on 'cooking' the

hearing tape, and asked the silly question "Suppose that is true, what does that show?". "Falsifying records" is against the Congress and Senate passed new law and the President's speech (See Appendix 33), Mr. Suzanne Green's bad action has breached the people's trust and abused NASD's power. This criminal action should be punished. However, Mr. William Young did not uphold Congress and Senate passed new law, and did not punish Mr. Suzanne Green's criminal action. (4) Mr. William Young even against the law of 15 U.S.C.A. §78a, challenged the fairness of stock trading, deny that "First come, first serve" should be one of the criteria of fairness in stock trading. (5) Mr. William Young ignored the arbitration management fraud, and claim that "Arbitration is second-class justice", so that no matter the arbitration administrator made how serious criminal action, the arbitration result has to be confirmed. According to Mr. William Young's logic, the arbitration administrator is just like the Emperor or Empress, who can do any criminal actions as his/her will, and cannot be punished.

SUMMARY OF ARGUMENT

According to the Bill of Right, due to the conflict interests, this case should be handled by the District Court from the beginning. Ordering this case to be handled by NASD arbitration is one misjudgment.

The District Court should investigate the arbitration management frauds and punish those arbitration management frauds.

Started from Aug. 17, 2002, the Plaintiff submitted six motions in order to vacate the unfair arbitration award, and re-open this case in the Court, the Defendant unreasonably claim that "the Plaintiff did not submit motion to vacate the arbitration award within the time allowed by law" is mistakenly explained Federal Arbitration Act.
The unfair arbitration result should be vacated.

The Defendant's failure to execute customer's order should be punished;
The Defendant's cheating and insulting customer should be punished;
The Defendant's cheating SEC should be punished;
The Defendant's lying under the oath should be punished;
The Defendant failed to provide case related critical information should be punished;
The Defendant's invading the Plaintiff's privacy should be punished;
The Defendant's blocking customer's on-line account should be punished.

Mr. William Young should study and uphold the new law, which passed by Congress and Senate, and signed by the President.

Mr. William Young should not against the common sense, should not against 15 U.S.C.A. §78a, should not deny that the securities trading should be fair, and 'First come, first serve' should be one of the basic criteria for the trading fairness.

ARGUMENT

I. The Defendant mistakenly explained the law

In the Defendant's Brief, it argues (See Defendant's Brief, page 6):
"De Shen failed to file the Motion to Vacate within the time allowed by law". The Defendant quoted one statement from Section 12 of the Federal Arbitration Act as following:
"Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered …"
Then the Defendant claims, "De Shen filed the Motion to Vacate on December 16, 2002 (see, Appellant's Appendix, Tab 25); nearly five-months after the NASD filed and delivered the Award and well past the three-month deadline imposed by the Federal Arbitration Act."

Actually, the Plaintiff submitted the first motion and a cover letter to vacate, modify, or correct the arbitration award and re-open this case on the District Court on Aug. 16, 2002, within ONE month after the award is delivered (See Appendix 17, 18)! And the Plaintiff continually submitted SIX motions in order to vacate, modify, or correct the arbitration award and re-open this case on the District Court(See Appendix 17, 18, 19, 22, 24, 26, 27). The Plaintiff has to ask the Defendant, does "a motion submitted within ONE month after the award is delivered" belong to "timely" or "untimely"? When the Defendant says, "Many of the issues raised by De Shen are untimely"

(See Plaintiff's Brief, line 15 – 17, page 5), did the Defendant really read the Plaintiff's first motion and its cover letter? Actually, most issues were raised in the Plaintiff's first motion to vacate the Arbitration Award (See Appendix 17, 18).

Yes, this first motion and its cover letter to vacate, modify, or correct the arbitration award is with the title of "Motion: Plaintiff strongly request to re-open this case". The plaintiff believes "re-open" means vacate the unfair arbitration award, and re-handle this case on the District Court. Maybe the Defendant requests the Plaintiff to put a word "vacate" in the title of the motion. However, FAA does not define the detail on how to write a motion's title. FAA does not define that a motion to vacate, modify, or correct an award should have a title which includes a word "vacate". To understand a motion, you should read the substantial content of the motion. The Defendant once again tries to play the word game on this serious issue. It tries to mistakenly explain the FAA rule from "a motion to vacate, modify, or correct an award" to "a motion with a title includes a word 'vacate', 'modify', or 'correct' an award". But, the above two rules are not identical. The Plaintiff wonders whether the lawyer of the Defendant are qualified as lawyers. This type of mistakenly explaining FAA rule should not be tolerant! This type of mistakenly explaining FAA rule should not come from a qualified lawyer.

On this issue, Mr. William Young's judgment is correct. Mr. William Young's reasoning is "the only reason to reopen a case after arbitration is either to confirm or vacate the award."

The Plaintiff would like to quote the Plaintiff's cover letter of Aug 16, 2002 as following: (See Appendix 18 for full text.)

<START OF QUOTE>

According to the Honorable Judge Young's statement on July 2, 2001, the plaintiff seriously went through the arbitration with the defendant from July 26, 2001 to July 20, 2002. As predict, due to the conflict interest, NASD was unable to fairly make item-by-item judgment on this case.

Justice judgment should base on fair examination of facts.

However, the defendant rejected to provide the case related critical information again and again. I wonder, without that critical information, how the arbitrators can make any right decision. The plaintiff strongly requests the honorable judge to compel the defendant to provide the critical case related document requested by the plaintiff in the Plaintiff's "First Request For Document and Information to Defendant".

Justice judgment should base on the principle of "All People are created equal".

However, the defendant openly requested the arbitration panel to dismiss this case by race prejudice. And the result is just as the defendant's willing, the three arbitrators dismissed the Plaintiff's claim in the entirety without any reasoning:
Count (8) which is directly associated with NASD was untouched;
The defendant's failure to execute customer's order was not punished;

The defendant's cheating and insulting customer was not punished;
The defendant's cheating SEC was not punished;
The defendant and its lawyer's lying under the oath were not punished;
The defendant failed to provide case related critical information was not punished;
The defendant's hiring lawyer to invade the Plaintiff's privacy was not punished;
In general, the defendant successfully escaped from the justice judgment in the arbitration hearing due to the conflict interest.

During the selecting arbitrators procedure, the administrator of NASD Arbitration, Ms. Green lied and unfairly composed a Panel, which is in favor of the defendant.

After hearing, after many times of the plaintiff requesting on the hearing tapes, the administrator of NASD Arbitration, Ms. Green finally deliver to the plaintiff two copies of the hearing tapes, in which, there are many contents are missed. Some panel member's speech, which obviously bias in favor of the defendant, are erased from the tapes. Ms. Green might think that, by this way, she could help the defendant win the game. However, her IQ is too low! Her actions just like an old story – "A person put a slogan 'There is no 300 once Silver here' above the place where he hided 300 once Silver". Without the judgment in the court, Ms. Green's action has already proved that this arbitration was unfairly processed by the arbitration panel. Until now, Ms. Green is still unwilling to provide the "Exact" copy of the original hearing tape. A copy of tapes edited by the NASD will

be present to this court. The plaintiff strongly requests the honorable judge to compel the NASD to provide exact copies of the original hearing tape to the Plaintiff and the court.

On July 2, 2001, our Honorable Judge Young replied to the Plaintiff's motion: " ***To reopen, this case must first proceed through arbitration****."*

The plaintiff hereby, present a motion, "Motion --- Plaintiff strongly request to re-open this case" to this court. The plaintiff pray to the Honorable Judge in this Court, in order to punish the defendant's series of wrong doing, this case should be reopened and the investigation about the defendant's illegal actions in this case should be handled by this Honorable Court. I sincerely pray to the Honorable Judge to provide justice judgments in this court on this case according to the Bill Of Right.

File attached with this letter

No. 20020816 – 1 Motion, Plaintiff strongly request to re-open this case
No. 20020816 – 2 Amendment of Arbitration Statement of Claim
No. 20020816 – 3 Opening Statement
No. 20020816 – 4 Response to Defendant's Motion to Compel Its Referenced Matter
No. 20020816 – 5 Respondent's Amended Statement of Answer
No. 20020816 – 6 First Request For Document and Information to Defendant

No. 20020816 – 7 Respondent's Response to the Claimant's First Request for Production of Documents and Information
No. 20020816 – 8 Respondent's Motion to Compel the production of Documents
No. 20020816 – 9 Respondent's First Request for Document and Information to Claimant
No. 20020816 – 10 Evidence of Defendant Preventing Customer to Present Data to Honorable Judge in the Court
No. 20020816 – 11 Arbitration Causal Challenge
No. 20020816 – 12 NASD Associate VP's Cover Up Letter
No. 20020816 – 13 NASD Ms. Green's Award Information Letter
No. 20020816 – 14 NASD Award Document
No. 20020816 – 15 Emails Regarding to the Hearing Tape
<END OF QUOTE>

If anyone read the Plaintiff's motion and the above cover letter of Aug. 16, 2002, he/she should immediately get the conclusion that this motion is for vacating the unfair arbitration award and request to reopen this case on the District Court. The Defendant mistakenly explained 'the Federal Arbitration Act'. The Defendant should be punished for its mistakenly explanation of 'the Federal Arbitration Act'.

II. The Defendant lie on submission ranking form issue; The Defendant involved the fraud on selecting arbitration panel

On page 3 of the Defendant's Brief, the Defendant wrote: "TD Waterhouse submitted its ranking of potential arbitrators within the time allowed by NASD DR rules." The Defendant lied again on this issue.

The deadline of submitting the Panel candidate list is Dec. 24, 2001. The Plaintiff selected the Panel list and submitted on Dec. 15, 2001.
After the Dec. 24, 2001 deadline, the Plaintiff called Ms. Kelly Davis, asked her whether the Defendant (Respondent) had submit their arbitrator list on time. **Ms. Kelly Davis informed me that NASD had not received the Defendant (Respondent)'s list yet.** And she told me NASD would process on the arbitration panel list anyway without waiting for the Defendant (Respondent)'s list.

The Plaintiff strongly request Ms. Kelly Davis to testimony on the court. **Until today (Aug 25, 2003), Ms. Kelly Davis has not lied on this issue yet.**

On this issue, the NASD Arbitration Administrator Ms. Suzanne Green lied.
On this issue, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, lied.
On this issue, Mr. Derek Anderson, the lawyer for the Defendant lied.
Those liars lied during the Arbitration period. Some of those liars lied on the District Court. Their evil actions constituted the fraud mentioned on page 10-11 of the Plaintiff's "Brief of Appellant".

If the Honorable Judges in this US Court of Appeals are talent enough, this fraud should not be very

difficult to be verified. The Plaintiff request the Defendant commit its evil action on telling lies on this submission ranking form issue before the verification by the judges in this US Court of Appeal. If the Defendant does not commit its evil action on telling lies until the judges figured out the truth, then the penalty should be much higher then Defendant commits its evil actions earlier.

III. The Defendant is failed to deny the arbitration hearing tape fraud

The Defendant wrote on page 4-5 of its Brief: "De Shen complained to the NASD that he did not received all of the tapes (De Shen received three (3) tapes and claims that four (4) existed)."

The above statement is not true. The truth is: Ms. Suzanne Green informed the Plaintiff that there are four hearing-tapes (after July 18, 2002). After the Plaintiff complained that some content on the arbitration hearing are missed on the copied and edited hearing tapes; And the copied and edited tapes are only three tapes, which is different with what Ms. Suzanne Green said before that there are total four hearing tapes; Only after then, Ms. Suzanne Green started to change her words and start to claim that there are only three hearing tapes. The details are as following:

After many times requesting for the arbitration hearing tapes, the Plaintiff received Ms. Suzanne Green's message from the telephone answer machine. Ms. Suzanne Green informed the Plaintiff: "There are

total four hearing tapes. $15.00 for each tape. If you need two copies of the hearing tapes, you need to pay $120.00 before the tapes can be shipped to you." The Plaintiff sent a Fleet Bank Money Order of $120.00 to NASD on July 27, 2002, quickly after received and confirmed Ms. Suzanne Green's telephone message (See Appendix 16).

If there are only three hearing tapes for this arbitration case, then:

(1) Why after more than 30 days of the arbitration hearing, Ms. Suzanne Green informed the Plaintiff that there are four hearing tapes?
(2) Why Ms. Suzanne Green informed the Plaintiff that the payment is $120.00?
(3) Why Ms. Suzanne Green did not correct her 'mistake' after she received the Plaintiff's $120.00 payment before the Plaintiff complaint this issue on Aug 10, 2002 (Within more than 50 days of the Arbitration hearing)?
(4) Has the $30.00 refund check from NASD on Aug. 12, 2002 (See Appendix 17) proved that there is inconsistency information provided by Ms. Suzanne Green?
(5) Did Ms. Suzanne Green lie on "four tapes" version? Or did Ms. Suzanne Green lie on "three tapes" version?

On both the Feb. 6, 2003's district court hearing, and the Plaintiff's Brief, the Plaintiff mentioned that on the Arbitration hearing of June 20, 2002, 'The Arbitrator Chair Richard D. Jordan openly protects the Defendant. He said loudly, "It is trade secret!"'. The Defendant neither denied this fact on the Feb. 6, 2003's district court hearing. Nor denied this fact in

the Defendant's Brief. However, this statement is erased from the hearing tape.

Ms. Suzanne Green directed and involved the two arbitration management frauds. Her evil actions has breached people's trust and abused NASD's power.

The Plaintiff strongly request Ms. Suzanne Green and three arbitrators testimony on this Court. The Plaintiff would like to verify that whether those three arbitrators are liars or not.

IV. **Conflict interest should be avoided; The Court should uphold the Constitution; Derek Anderson openly denies the Constitution should be punished.**

In the Defendant's second argument, (page 10-12 of the Defendant's Brief), the Defendant is trying to prove that "De Shen was bound by his TD Waterhouse new account application, which required him to arbitrate his dispute".

Yes. In most cases, the dispute between parties should be arbitrated if there is an agreement according to Mr. William Young's explanation on the Nov. 14, 2000's District Court Conference. The Defendant wrote two pages, and list many cases. However, it proved nothing. Actually, the Plaintiff agreed with Mr. William Young's order to go to Arbitration first on the Nov. 14, 2000's District Court Conference (See Appendix 04).

The critical issue is: NASD cannot arbitrate itself! Conflict interest should be avoided!

After Nov. 14, 2000's District Court Conference, when the Plaintiff preparing for the Arbitration Claim, the Plaintiff found that there is one issue, which will conduct the conflict interest if this case handled by NASD Arbitration (See count 8 of Appendix 05, Appendix 06, and Appendix 07).

Just a few weeks after the Plaintiff submitted the "Market Recap" data to the District Court, the Defendant suddenly requested its customers to sign three new agreements (See Appendix 03). In each of the agreement, there is at least one place request customer do not submit Market Data to any other person or entity (See page 2 count 5, page 4 count 2, and page 7 line 12-14 of Appendix 03). Of cause, the "any other person and entity" includes the judges and the Courts. The Defendant's purpose of these three agreements is to prevent its customers submitting critical case related data to the court. In the cover letter of these three new agreements, the Defendant wrote: "…, and **National Association Securities Dealers (NASD) require that you accept their respective subscriber agreements** before we can grant you continued access to webBroker, …" (See Line 3-7, Page 1 of Appendix 03). **These three agreements are the Defendant's elaborately planned tricks. If you signed these three agreements, then you cannot submit "Market Recap" data to the Court. If you against these three agreements, then the Defendant will take advantage of this conflict interest issue in the NASD arbitration hearing.**

On Feb. 3, 2001, the Plaintiff filed a motion, inform the Court that there is a conflict interest issue if this case handled by NASD arbitration (See count 7, 8, 9, Page 3 of Appendix 06).

<START OF QUOTE>

"On the Nov 14's conference, our Honorable Judge Young suggests that the Plaintiff should go through Arbitration first. If the problems cannot be solved or the problems were not solved properly, then our Honorable Judge will accept to handle this case with justice in this court. The Plaintiff agreed to follow our Honorable Judge's suggestion. The Plaintiff rewrote a Complaint for Arbitration (See Attached). **However, after rewriting the Complaint, the Plaintiff discovered that there is a conflict interest if this case goes through arbitration.** Mr. Sullivan informed me that I might bring arbitration before either the NASD or NYSE. The count 8 in the new Complaint document might be closely related to NASD and NYSE. With my understanding, NASD or NYSE cannot arbitrate itself since there is a conflict interest. Hence, the Plaintiff would like to present this point to our Honorable Judge. After considering avoiding the conflict interest, the Plaintiff strongly requests this case to be re-opened and to be handled directly through this court.

.....

I, hereby, pray to the Honorable Judge in this Court, in order to avoid the conflict interest, this case should be reopened and the investigation about the Defendant's illegal actions in this case should be handled by this Honorable Court. I sincerely pray to the Honorable Judge to provide justice judgments in this court on this case according to the Bill Of Right.

"

<END OF QUOTE>

However, the Court denied this motion (See Appendix 07). The Plaintiff believes this ruling was incorrect. It is violated the Constitution. In the count 8 of the Plaintiff's Complaint, the Plaintiff pointed out that one NASD's contract tries to prevent Defendant's customer presenting valid data evidence to the honorable Judge in the court. NASD cannot arbitrate itself. The conflict interest should be avoided. With the conflict interest, the arbitration will be not fair. Further, Freedom of Speech is included in the Bill of Rights (the first ten amendments of US Constitution). According to the Bill of Rights, people should have the right to choose whether they want to handle their case by arbitration or by Court.

Due to the Conflict Interest issue, NASD cannot arbitrate itself. The Plaintiff does believe that the Plaintiff has the right to chose solve this issue by the Court with juries. The Bill of Right grants and guarantees the Plaintiff's right. The Bill of Right is the most important authority. The Constitution is the most important authority. **The Defendant denied the authority of the Bill of Right** when the Defendant claims "De Shen offers no authority" (See the last line in Page 11 of the Defendant's Brief). **The Defendant denied that the US Constitution is most fundamental and important law** when the Defendant claims "De Shen's assertion fails as a matter of law." (See second line in Page 12 of the Defendant's Brief)

The Plaintiff believes that this Court should uphold the US Constitution. Anyone who tries to

deny the Constitution should be seriously punished. As a lawyer, Mr. Derek Anderson openly denies the Constitution. The Plaintiff wonders whether Mr. Derek Anderson is qualified as a lawyer?

V. Arbitration Management Fraud should be punished.

(a) Fraud in organizing the Arbitration Panel

The deadline of submitting the Panel candidate list is Dec. 24, 2001. The Plaintiff selected the Panel list and submitted on Dec. 15, 2001. One day (after Dec. 24, 2001, and before Feb.1, 2002) (In the document I sent to NASD, I mentioned Dec. 26, 2002, however, I might miss remember the exact date) the Plaintiff called Ms. Kelly Davis, asked her whether the Defendant (Respondent) had submit their arbitrator list on time. **Ms. Kelly Davis informed me that NASD had not received the Defendant (Respondent)'s list yet.** And she told me NASD would process on the arbitration panel list anyway without waiting for the Defendant (Respondent)'s list.

If Ms. Kelly Davis' statement is true, then, all the arbitrators should come from the Plaintiff selected arbitrator list. However, when the Plaintiff received the finalized arbitrator list of the Panel from Ms. Suzanne Green, the Plaintiff found that only Mr. Richard D. Jordan (4) was selected as the arbitrator of the Panel.

The Plaintiff called Ms. Suzanne Green to clarify what happened. **Ms. Suzanne Green told the Plaintiff that the Defendant submitted their arbitrator list on Dec. 24, 2001**.

Since the result of the arbitration is critically depended by who is (are) arbitrator(s), the Plaintiff had to file causal challenge to request Ms. Suzanne Green to clarify the timing issue. However, one month passed, Ms. Suzanne Green still unable to clarify this issue.

On a letter that the Plaintiff sent to the President of NASD, the Plaintiff wrote:
"After one month that I asked Ms. Suzanne Green regarding to the Timing Issue on the Defendant's submission of its selected Arbitrator List for the Panel, **Ms. Suzanne Green is still unable to answer my simple question. Hence, I formally propose the investigation request on this issue to NASD Dispute Resolution, Inc.**

If Ms. Suzanne Green was cheating or lying on the Arbitration Job, she should not be qualified as an Arbitration Administrator on this case."

On March 26, 2002, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, replied me a letter (See Appendix 10). In her letter, **Ms. Clancy provided a third version** of this timing:
"Respondent's ranking form was sent to us by facsimile, and received in our office on December 11, 2001, with an original copy arriving on December 12, 2001." People have to ask Ms. Clancy, *December 11, 2001 was far away from December 24, 2001*

deadline, overnight delivery is quite enough, why the Defendant send another copy by facsimile besides the overnight delivery? Is this just like an Old Story, "when completed drawing a beautiful picture of a snake, appending legs to that snake"?

Until now, who was lying, who was cover up, is still a riddle. The Plaintiff strongly believes that Ms. Kelly Davis was telling the truth at that moment. Until now, Ms. Kelly Davis has not lie yet. ***The Plaintiff request Ms. Kelly Davis to testimony on the court.*** If Ms. Kelly Davis could tell the truth on the court, the Plaintiff request the Court protect Ms. Kelly Davis, avoid the revenges from NASD. If she does not tell the truth on the court, then this issue will be covered up. The Plaintiff wonders whether the Court is talent enough to expose the truth.

(b) Fraud on 'Cooking' Hearing Tape

(Forgery is a Criminal Behavior)

The Plaintiff received the hearing tape of the arbitration (NASD No. 01-03697) on Aug. 10, 2002. When the Plaintiff listen to the tape, the Plaintiff discovered that many content of the arbitration hearing are not in the tape.

On the arbitration, the arbitrators openly bias in favor of the Defendant. For example, when the Plaintiff asked the Defendant to provide detailed case related trade information to the Arbitration Panel. (Without those basic facts, the arbitration will be baseless.) The Arbitrator Chair Richard D. Jordan openly protects

the Defendant. He said loudly, "It is trade secret!" However, this statement is erased from the hearing tape.

This is one fact that it proved the arbitration resolution is extremely unfair.

(1) In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives for Reform on Corporate Responsibility", President Bush said:
"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

Erase content from hearing tape is one type of "falsifying records". And this type of forgery hearing tape is a criminal behavior. NASD arbitration administrator Ms. Suzanne Green should be punished on her bad behavior. Her bad behavior has breached the people's trust and abused NASD's power.

(2) On the same speech, President Bush said:
"Self-regulation is important, but it's not enough. Government cannot remove risk from investment -- I know that -- or chance from the market. But government can do more to promote transparency and ensure that risks are honest. And government can ensure that those who breach the trust of the American people are punished."

The arbitrators helped the Defendant to refuse providing critical case related trade information and to hide the true trade transaction data by claiming "It

is Trade Secret". The arbitrators' action and the Defendant's action are strictly against the law, which passed by Congress and Senate. Congress, Senate and President Bush ask to promote transparency. While the arbitrators' action and the Defendant's action are strictly going to the opposite direction. Their actions breached the trust of the American people.

The Plaintiff believes that the court should act now to promote the data transparency and ensure the unfair and un-honest trade fraud is punished.

(3) On the same speech, President Bush said: **"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."**

The Plaintiff believes that the Defendant's denying its mistake again, again and again should be seriously punished. When this case re-opened in the court, the minimum punishment should be $1,000,000.00.

However, if the punishment reached or exceeded $1,000,000.00, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Lawyers and Security Workers to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

(4) On the same speech, President Bush said: **"If more scandals are hiding in corporate America, we must find and expose them now, so we can begin rebuilding the confidence of our people and the momentum of our markets."**

The Plaintiff believes that it is the time, on this court, to expose the Defendant's trade fraud and NASD's frauds on "cooking the hearing tape" and "forging the arbitration panel".

The Plaintiff respectively requests the court:

(I) ***Order the NASD to provide the true copy of the hearing tape of the arbitration (NASD No. 01-03697) to the Plaintiff and to this court***

(II) ***Order the Arbitrators and Ms. Green testimony in this Court***

(III) ***Order the Defendant to provide true transaction data (include Order type, Order Date, Order Price, and "whether that order is placed by Market Maker or Broker" appended to the Market Recap) to the Plaintiff and to this court.***

(IV) ***Help arranging Ms. Kelly Davis to testimony on the court.***

The Plaintiff believes that this court, as one part of the US government, has the guts and power to make the above orders.

VI. The Arbitration Award should be vacated. This case should be handled in the court with Juries.

(A) Section 10 of Federal Arbitration Act

Sec. 10. - Same; vacation; grounds; rehearing

(a)

In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration -

(1)

Where the award was procured by corruption, fraud, or undue means.

(2)

Where there was evident partiality or corruption in the arbitrators, or either of them.

(3)

Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any

other misbehavior by which the rights of any party have been prejudiced.

(4)

Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(5)

Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

(B) This case matched three criteria for vacating the award

a. The unfair arbitration award is conducted and procured by these two frauds.

During the Arbitration from July 26, 2001 to July 20, 2002, as predict, due to the conflict interest, there are two arbitration management frauds occurred. The Defendant involved the first fraud. And the Defendant is unable to deny the second fraud. The unfair arbitration

award is conducted and procured by these two frauds.

b. The arbitrators are obviously partial to the Defendant.

One evident partiality in Arbitrator is as following:
When the Plaintiff Analyze on Failure to Execute Stock Order issue, the Defendant repeatedly claimed: "This is speculation". One arbitrator (who sit near the Plaintiff side) chime in with the Defendant, he said: "We all know that!"
The Defendant cannot deny this is one evident partiality!

The most evident partiality to the Defendant is the Arbitration Result. The Defendant made so many mistakes; The Market Recap precisely indicated that it is Defendant's mistake; The Defendant failed to provide the critical data to prove its own argument "Market orders receive execution priority"; all those facts should conduct an award, which should seriously punish the Defendant. However, the Arbitration Panel unfairly dismissed the Plaintiff's claim in the entirety.

c. Justice judgment should base on fair examination of facts.

The Market Recap (See Appendix 01) has clearly proved that it is the Defendant's

mistake on "Failure to execute" in this case. The Defendant claimed in its "Respondent's Statement of Answer": "Market order receive execution priority" (Page 5 in Appellee's Appendix, Also see Respondent's amended statement of answer, page 37 of the Appellee's Appendix, line 7). It is the Defendant's burden to prove its point. In order to prove its point, the Defendant should prove that all the sell orders of those 170 transactions are Market orders. Hence the Defendant should provide true transaction data (include Order type, Order Date, Order Price, and "whether that order is placed by Market Maker or Broker" appended to the Market Recap). However, the Defendant rejected to provide this case related critical information again and again. I wonder, without that critical information, how the arbitrators can make any right decision. Under the Umbrella of the evident partiality arbitrators, until now, the Defendant failed to prove that all the sell orders of those 170 transactions are Market orders. And as long as one sell order of those 170 transactions is NOT Market order, the Defendant's argument is automatically defeated. ***According to statistics theory, it is almost impossible that all the sell orders of those 170 transactions are Market orders.*** If the arbitrators understand statistics theory, they can reach the conclusion immediately that the Defendant is lying and the Defendant is responsible for the failure to execute the Plaintiff's order. If the arbitrators don't understand the statistics theory, then they

should ask the Defendant to provide detailed information about the order type of the sell orders of those 170 transactions to get the right conclusion. Under the Umbrella of the evident partiality arbitrators, the Defendant has not provided the case related critical information (evidence pertinent and material to the controversy) until today. ***The Plaintiff strongly requests the Court compel the Defendant to provide the critical case related document requested by the Plaintiff in the Plaintiff's "First Request For Document and Information to Defendant".***

d. Justice judgment should base on the principle of "All People are created equal".

However, the Defendant openly requested the arbitration panel to dismiss this case by race prejudice. And the result is just as the Defendant's willing. The three arbitrators dismissed the Plaintiff's claim in the entirety without any reasoning:
Count (8) which is directly associated with NASD was untouched;
The Defendant's failure to execute customer's order was not punished;
The Defendant's cheating and insulting customer was not punished;
The Defendant's cheating SEC was not punished;
The Defendant's lying under the oath were not punished;

The Defendant failed to provide case related critical information was not punished;
The Defendant's invading the Plaintiff's privacy was not punished;
In general, the Defendant successfully escaped from the justice judgment in the arbitration hearing due to the conflict interest.

e. Fairness should be the basic principle for stock trading

"First come, first serve" should be one of the basic rules for stock trading. The Plaintiff asked many experts on stock trading (include some arbitrators and lawyers) the following question:
"If there are 10 same limit orders to sell 5000 shares stock XYZ at price $2.00, Person A placed order on Feb. 23, 2000, while others placed the same order on March 7, 2000. When Market bid price exceeded $2.00, which order should be executed first?" **All the answer are same: "Person A's order should be executed first because that order placed first."**

Mr. William Young challenging this basic stock-trading rule on the hearing of Feb 6, 2003 is incorrect.

f. Arbitration Result is NOT always correct

Mr. William Young claimed, "Arbitration is second-class justice" (Feb 6, 2003, Motion

Hearing Transcript, Page 10, Line 25). According to this assumption, Mr. William Young blindly confirmed the Arbitration award. Now, I start to understand why Ms. Suzanne Green dares to forge the Arbitration Panel. Now, I start to understand why Ms. Suzanne Green dares to "cook" the Hearing Tape. Now, I start to understand why the Arbitrators dare to help the Defendant to hide the unfair trading Data. It is because they have the "Umbrella" of "Arbitration is second-class justice". With this "Umbrella", No matter how many criminal actions they did, no one will punish them! However, people have to ask Mr. William Young: If you do not work hard to investigate each case, if you do not have talent to distinguish who is good, who is bad, who did criminal actions, if you do not uphold justice, do not punish the criminal actions, why people need you? People need you is because Arbitration Result is NOT always correct, especially there is conflict interests involved. Unfair Arbitration result should be corrected by the Court. If our Mr. William Young does not correct those Arbitration Mistakes, then, our Mr. William Young is neglecting his duties.

According to our Mr. William Young's logic, then, the civil court will be the "first justice". Hence, our Mr. William Young will be always right since he is the chief Judge in this court. Hence, there will be no need to have Appeal Court and Supreme Court. Fortunately, US People do not trust our Mr. William Young's

logic. Mr. William Young might make mistakes. Mr. William Young's mistakes should be corrected by the Appeal Court and/or Supreme Court. Anyone should obey the law. Ms. Suzanne Green's Arbitration Management frauds should be punished. TD Water House's trade fraud should be punished.

CONCLUSION OF THE REPLY BRIEF

(I) Due to conflict interest, two frauds happened. The Defendant involved one fraud. The Defendant is unable to deny another fraud. Those two frauds conducted the unfair arbitration award. According to Section 10 of the Federal Arbitration Act, this unfair arbitration award should be vacated. This case should be reopened on the Court with Juries.

(II) NASD's Arbitration Management Frauds should be punished. The minimum punishment should be $1,000,000.00.

(III) The Defendant (TD Water House Investor Service, Inc)'s Trade fraud, followed by its cheating customer, insult customer, cheating SEC, lie under OATH, etc should be punished. The minimum punishment should be $1,000,000.00.

(IV) If the total punishment exceeded $1,000,000.00, as Promised, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Security Workers, Lawyers and Judges to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

APPENDICES 4

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

Sep 29, 2003

Plaintiff (Appellant/Cross – Appellee)'s MOTION
On Punishing the Frauds
Of the Defendant and NASD

(I) NASD's fraud on cooking hearing tapes is proved

As predict, the Defendant was unable to file the Reply Brief of Appellee/Cross-Appellant.

Yes. The Plaintiff's Reply Brief (of Appellant/Cross-Appellee) is VERY, VERY, VERY DIFFICULT for the Defendant to reply. If the Defendant submits its Reply

Brief of Appellee/Cross-Appellant, then, it either automatically commits the NASD Arbitration Administrator's fraud on cooking the arbitration hearing tape, or it has to make more lies.

In the Plaintiff's Reply Brief (of Appellant/Cross-Appellee), (VI) (B) (2), the Plaintiff wrote:

> ***(2) The arbitrators are obviously** partial **to the Defendant.***
>
> *One evident partiality in Arbitrator is as following:*
> *When the Plaintiff Analyze on Failure to Execute Stock Order issue, the Defendant repeatedly claimed: "This is speculation". One arbitrator (who sit near the Plaintiff side) chime in with the Defendant, he said: "We all know that!"*
> *The Defendant cannot deny this is one evident partiality!*

The arbitrator (who sit near the Plaintiff side) only spoke a few times. And when he said, "We all know that!" after the Defendant repeatedly claimed: "This is speculation", the arbitrator's voice was very loud. So, no one should forget what he said.

If the Defendant claims that what the arbitrator's statement "We all know that!" is not partial to the Defendant, then the Defendant is automatically committing that the arbitrator (who sit near the Plaintiff

side) did indeed say, "We all know that!" on the arbitration hearing of June 20, 2002. However, this statement was erased from the arbitration hearing tapes, which were delivered to the Plaintiff.

If the Defendant claims that the arbitrator (who sit near the Plaintiff side) did not say that statement on the arbitration hearing of June 20, 2002, then the Defendant is making more lies.

According to the logic analysis, "NOT DENY" implies "COMMIT".

(1) The Defendant did not submit its Reply Brief of Appellee/Cross-Appellant.

(2) Hence, the Defendant did not deny the fact of 'the arbitrator (who sit near the Plaintiff side) did indeed say, "We all know that!" on the arbitration hearing of June 20, 2002'.

(3) However, this statement was erased from the arbitration hearing tapes, which were delivered to the Plaintiff.

(4) Hence, NASD arbitration administrator's fraud on cooking hearing tapes is proved!

(II) The Frauds of the Defendant and NASD should be punished

The fact of 'the Defendant was unable to submit its Reply Brief of Appellee/Cross-Appellant' also proved that the Defendant is unable to deny the facts written in the Plaintiff (Appellant/Cross-Appellee)'s Reply Brief:

(1) The Defendant mistakenly explained the law;

(2) The Defendant lie on submission ranking form issue; The Defendant involved the fraud on selecting arbitration panel;

(3) The Defendant is failed to deny the arbitration hearing tape fraud;

(4) Conflict interest should be avoided; The Court should uphold the Constitution;

(5) Arbitration Management Fraud should be punished;

Hence, the Plaintiff (Appellant/Cross-Appellee) respectively requests the US Court of Appears to make the following actions:

(I) The unfair Arbitration Award should be vacated.

(II) NASD's Arbitration Management Frauds should be punished. The minimum punishment should be $1,000,000.00.

(III) The Defendant (TD Water House Investor Service, Inc)'s Trade fraud, followed by its cheating customer, insult customer, cheating SEC, lie under OATH, etc should be punished. The minimum punishment should be $1,000,000.00.

(IV) If the total punishment exceeded $1,000,000.00, as Promised, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Security Workers, Lawyers and Judges to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

APPENDICES 5

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

Nov. 3, 2003

Plaintiff (Appellant/Cross – Appellee)'s MOTION On Request to arrange Ms. Kelly Davis to testimony on this court

(I) The fraud on selecting arbitration panel is proved

In the Plaintiff's Reply Brief (of Appellant/Cross-Appellee) (II), the Plaintiff wrote:

II. The Defendant lie on submission ranking form issue; The Defendant involved the fraud on selecting arbitration panel

On page 3 of the Defendant's Brief, the Defendant wrote: "TD Waterhouse submitted its ranking of potential arbitrators within the time allowed by NASD DR rules." The Defendant lied again on this issue.

The deadline of submitting the Panel candidate list is Dec. 24, 2001. The Plaintiff selected the Panel list and submitted on Dec. 15, 2001.
After the Dec. 24, 2001 deadline, the Plaintiff called Ms. Kelly Davis, asked her whether the Defendant (Respondent) had submit their arbitrator list on time. Ms. Kelly Davis informed me that NASD had not received the Defendant (Respondent)'s list yet. And she told me NASD would process on the arbitration panel list anyway without waiting for the Defendant (Respondent)'s list.

The Plaintiff strongly request Ms. Kelly Davis to testimony on the court. *Until today (Aug 25, 2003), Ms. Kelly Davis has not lied on this issue yet.*

On this issue, the NASD Arbitration Administrator Ms. Suzanne Green lied.
On this issue, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, lied.
On this issue, Mr. Derek Anderson, the lawyer for Mr. Derek Anderson lied.
Those liars lied during the Arbitration period. Some of those liars lied on the District Court. Their evil actions constituted the fraud mentioned

on page 10-11 of the Plaintiff's "Brief of Appellant".

If the Honorable Judges in this US Court of Appeals are talent enough, this fraud should not be very difficult to be verified. The Plaintiff request the Defendant commit its evil action on telling lies on this submission ranking form issue before the verification by the judges in this US Court of Appeal. If the Defendant does not commit its evil action on telling lies until the judges figured out the truth, then the penalty should be much higher then Defendant commits its evil actions earlier.

The Defendant did not submit the Reply Brief to deny that Ms. Suzanne Green, Ms. Elizabeth R. Clancy and the Defendant had all lied on this issue. The Defendant did not deny that *the Defendant directly involved the fraud* ***on selecting arbitration panel.***

Not deny implies commit. The Defendant and NASD's fraud on selecting arbitration panel is proved.

The Plaintiff start to investigate the ranking form submitting issue on Feb. 18, 2002. On Feb 24, 2002, the Plaintiff submitted the Arbitration Causal Challenge by email. In the same email, the Plaintiff asked Ms. Green the following simple questions:

========== *Simple Questions* ==========

I was heard that the defendant did not delivered their list of arbitrators even by Dec 26, 2001. Hence, I would like to ask the following

questions for fully understand how this panel list was decided:

(i) By what type of the mail that the defendant delivered their list of arbitrators?

(a) Certified Mail;

(b) Fed. Express.

(ii) What is the Postmark date on the defendant's mail for delivering their list of Arbitrators? Can I get a copy of the Envelop of the defendant's mail with the Postmark date?

(iii) By which date that your office received the defendant's mail regarding to the list of Arbitrators.

(iv) How the panel list was finally decided in detail?

On Feb. 28, 2002, the Plaintiff re-sent the above simple questions to
Ms. Suzanne Green.

On March 1, 2002, Ms. Suzanne Green was still un-able to answer the above simple questions, but she wrote in her reply email:

"it is the policy of this office to allow the opposing party to responds to such motion."

Hence, on March 1, 2002 (Same day after received Ms. Suzanne Green's email), the Plaintiff forwarded those simple questions to the Defendant.

However, the Defendant was also unable to reply those simple questions.

Since both the Defendant and Ms. Suzanne Green can not answer the Plaintiff's simple questions, the Plaintiff

had to send this issue to NASD President Linda D. Fienberg.

On April 2002, the Plaintiff received one letter, dated as March 26, 2002 (See Appendix 10 of Plaintiff's Brief Appendix of Appellant, also see Appendix 4 of Appellee's Appendix, the Appellee's copy machine is better), from Ms. Elizabeth R. Clancy. In this letter, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, openly lied. Ms. Elizabeth R. Clancy claimed that Respondent's (the Defendant) ranking form was sent to NASD by facsimile and received by NASD on Dec. 11, 2001, with original copy arriving on Dec. 12, 2001.

As analyzed by the Plaintiff (See page 20 of the Plaintiff's Reply Brief of Appellant):

> People have to ask Ms. Clancy, *December 11, 2001 was far away from December 24, 2001 deadline, overnight delivery is quite enough, why the Defendant send another copy by facsimile besides the overnight delivery? Is this just like an Old Story, "when completed drawing a beautiful picture of a snake, appending legs to that snake"?*

On April 2002, after received Ms. Elizabeth R. Clancy's letter, the Plaintiff received the Defendant's letter, which is dated as March 27, 2002. In this letter, the Defendant start to claim that it submitted the ranking form on Dec. 11, 2001.

Both Ms. Elizabeth R. Clancy and the Defendant included one forged document of the Defendant's ranking form, which is dated as Dec. 11, 2001.

Currently, there are three versions of the Defendant's submission of Arbitration ranking form.
(1) Ms. Kelly Davis: The Defendant did not submit its Arbitration ranking form before the Dec. 24, 2001 deadline;
(2) Ms. Suzanne Green: The Defendant submitted its Arbitration ranking form on the Dec. 24, 2001.
(3) Ms. Elizabeth R. Clancy: Respondent's (the Defendant) ranking form was sent to NASD by facsimile and received by NASD on Dec. 11, 2001, with original copy arriving on Dec. 12, 2001.

As Plaintiff stated before: The Defendant did not submit the Reply Brief to deny that Ms. Suzanne Green, Ms. Elizabeth R. Clancy and the Defendant had all lied on this issue. The Defendant did not deny that the Defendant directly involved the fraud on selecting arbitration panel.
Not deny implies commit. The Defendant and NASD's fraud on selecting arbitration panel is proved.
In the case this Court is still unable to determine that whether this fraud is verified or not, the Plaintiff strongly request this Court to arrange Ms. Kelly Davis to testimony on this court. Ms. Kelly Davis was the person handling this issue at that time. According to several conversations with Ms. Kelly Davis before, the Plaintiff believe that Ms. Kelly Davis will speak out the truth under the Court's protection. Until today (Nov. 3rd, 2003), Ms. Kelly Davis did not lie to the Plaintiff directly.

(II) The Frauds of the Defendant and NASD should be punished

In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives

for Reform on Corporate Responsibility" (See Page 2 of Appendix 33 of the Brief Appendix of Appellant), President Bush said:
"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

On the same speech, (See Page 3 of Appendix 33 of the Brief Appendix of Appellant), President Bush said:
"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."

On the Plaintiff's Sep 29, 2003's Motion, the Plaintiff proved the NASD's fraud on cooking (editing) hearing tapes. Until today, (Nov. 3, 2003), the Defendant has not denied this fraud. Hence, it further confirmed that "the NASD's fraud on cooking (editing) hearing tapes" is really happened.

On this motion, the Plaintiff proved the Defendant and the NASD's fraud on Arbitration Panel Selection Issue.

The penalty to one organization should be very serious, if the organization knowing the law but violating the law.

The Plaintiff (Appellant/Cross-Appellee) respectively requests the US Court of Appears to make the following actions:

(I) The unfair Arbitration Award should be vacated.
(II) NASD's Arbitration Management Frauds should be punished. The minimum punishment should be $1,000,000.00.
(III) The Defendant (TD Water House Investor Service, Inc)'s Trade fraud, followed by its cheating customer, insult customer, cheating SEC,

lie under OATH, etc should be punished. The minimum punishment should be $1,000,000.00.

(IV) If the total punishment exceeded $1,000,000.00, as Promised, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Security Workers, Lawyers and Judges to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

APPENDICES 6

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Nos. 03-1415; 03-1478

DE SHEN,
Plaintiff, Appellant\Cross-Appellee,

v.

T.D. WATERHOUSE INVESTOR SERVICE, INC.
Defendant, Appellee\Cross-Appellant.

No. 03-1478

MEMORANDUM OF TD WATERHOUSE INVESTOR SERVICES, INC IN OPPOSITION TO DE SHEN'S MOTION TO TAKE THE TESTIMONY OF KELLY DAVIS OF THE NASD

TD Waterhouse Investor Services, Inc ("Appellee") submits this memorandum in opposition ("Memorandum") to De Shen's ("Appellant") motion requesting that this Court take the testimony of Kelly Davis of the NASD. In addition to this Memorandum, Appellee submits herewith the affidavit of Derek C. Anderson, Esq.

I. Background

Appellant requests that the court take the testimony of Ms. Kelly Davis, an employee of the National Association of Securities Dealers, Inc ("NASD"). On

appeal, Appellant argues that the Order of the District Court denying Appellant's Motion to vacate the arbitration award should be reversed. Appellant argues, among other things, that the underlying arbitration award should be vacated under Section 10 of the Federal Arbitration Act ("FAA"). As grounds for his argument, Appellant alleges that Appellee failed to submit its ranking of potential arbitrators within the time allowed by the arbitration rules of the NASD. Appellant contends that Appellee's failure in this regard constitutes "fraud in organizing the arbitration panel".[1] Appellant now requests that this Court take the testimony of Kelly Davis of the NASD to substantiate his allegations.

II. Argument

This Court should deny Appellant's Motion for the reasons that such testimony is not allowed by the federal rules of appellate procedure and that the record on appeal has already been established. Rule 10 of the federal rules of appellate procedure limit the record to "the original papers and exhibits filed in the district court, the transcript of proceedings, and a certified copy of the docket entries delivered by the district clerk". U.S.C.A. Fed. Rules App. Proc. R. 10. Attempts to supplement the record should be disregarded by the Court since the

---

[1] Appellee pointed out in its Brief that this alleged "fraud" does not materially relate to an issue in arbitration as is required, and therefore cannot be grounds to vacate an arbitration award under Section 10 of the FAA. *See e.g. LaFarge Conseils Et Etudies, S.A. v Kaiser Cement& Gypsum Corp.* 791 F.2d 1334, 1339 (9th Cir. 1986) (citing *Dogherra v. SafewayStores, Inc.*, 679 F.2d 1293 (9th Cir. 1982) cert den. 459 U.S. 990. 74 L.Ed. 2d 386, 103 S. Ct. 346(1982)); see also *Bonar v. Dean Witter Reynolds, Inc.*, 835 F. 2d 1378. 1383 (11th Cir. 1988) (citing *Dogherra*,supra) (Appellee's Brief. P.15)

Appellant had every opportunity in the district court to present whatever evidence he thought was relevant to the issues at hand. *See e.g. Rosen v. Lawson-Hemphill, Inc*,. 549 F. 2d 205, 206 (1st Cir. 1986). The burden is on the Appellant to provide the Court with all material evidence. *See e.g. Hayes v. Consolidated Service Corp.*, 517 F.2d 564, 566 (1st Cir. 1975). The declaration of a witness which was never filed or submitted to the District Court cannot be part to the record on appeal. See e.g. *Kirshner v. Uniden Corp. of America*, 842 F.2d 1074, 1077 (9th Cir. 1988).

Here, Appellant seeks to have the Court take the testimony of a NASD employee. It is indisputable that testimony was not before the District Court when it rendered its Order denying Appellant's Motion to vacate the arbitration award. The testimony clearly is not part of the record. Appellant's Motion should be denied.[2]

---

[2] After receiving Appellant's Motion, counsel searched Appellee's facsimile transmitting its rankings of potential arbitrators. *See Affidavit of Derek C. Anderson, Esq.* Appellee's letter to the NASD transmitting its rankings of arbitrators was dated December 11, 2001. *Id.* The letter was delivered to the NASD via facsimile and overnight mail. *Id.* The facsimile confirmation sheet indicates that the NASD received the letter on December 11, 2001, well before the December 24, 2001 deadline. *Id.* This information corroborates Ms. Clancy's (of the NASD) March 26, 2002 correspondence regarding the selection arbitrators, and completely undermines Appellant's theory of fraud in organizing the arbitration panel". *See Appellee's Appendix*. Tab 4.

III. Conclusion

For all of the foregoing reasons, TD Waterhouse respectfully requests that the Court deny Appellant's Motion.

TD WATERHOUSE INVESTOR SERVICES, INC.

By its attorneys,

s/ Derek C. Anderson
Derek C. Anderson
Pete S. Michaels
MURPHY & MICHAELS, LLP
One Liberty Square
Boston, Massachusetts 02109
(617) 350-7700

Dated: November 24, 2003

APPENDICES 7

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Nos. 03-1415; 03-1478

DE SHEN,
Plaintiff, Appellant\Cross-Appellee,

v.

T.D. WATERHOUSE INVESTOR SERVICE, INC.
Defendant, Appellee\Cross-Appellant.

No. 03-1478

AFFIDAVIT OF DEREK C. ANDERSON

I, Derek C. Anderson, do hereby depose and state the following:

1. I, along with Pete S. Michaels, am the attorney of record for Appellee TD Waterhouse Investor Service, Inc. (T.D. Waterhouse).

2. After receiving Appellant's Motion, I searched TD Waterhouse's file and retrieved the facsimile transmitting TD Waterhouse's rankings of potential arbitrators. The cover letter to the NASD transmitting TD Waterhouse's rankings of arbitrators was dated December 11, 2001. The letter was delivered to the NASD via facsimile and overnight mail. The facsimile confirmation sheet indicates that the NASD

received the letter on December 11, 2001, well before the December 24, 2001 NASD deadline.

3. This information corroborates Ms. Clancy's March 26, 2002 correspondence regarding the selection of arbitrators. See Appellee's Appendix, Tab 4.

4. This information is not part of the record before the Court. Upon the request of the Court, we would be glad to provide the Court with this correspondence.

Sworn under the pains and penalties of perjury this 21 day of November 2003.

s/ Derek C. Anderson
Derek C. Anderson

APPENDICES 8

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

Nov. 24, 2003

Plaintiff (Appellant/Cross – Appellee)'s MOTION On Request Double Penalty To The Defendant For Its Continually Telling Lie

(I) The Defendant Continually Tells Lies

The Plaintiff received Mr. Derek C. Anderson's reply letter of Nov. 21, 2003. This letter is a response of the Plaintiff's Nov. 3rd's Motion.
This letter proved that the Defendant continually tells LIE until now.

Mr. Derek C. Anderson wrote:

I enclose the correspondence to the NASD enclosing TD Waterhouse's rankings of arbitrators. You will see that the cover letter is dated December 11, 2001 and notes that the rankings were delivered via facsimile and via overnight delivery (Optima). I have also enclosed the confirmation indicating that the facsimile was sent on December 11, 2001, well before the December 24, 2001 deadline. This information corroborates Ms. Clancy's letter to you (See Appellee's Appendix, Tab 4).

From the Defendant's attached files, you will see both the cover letter and FAX COVER SHEET are addressed to Ms. Kelly Davis, NASD Dispute Resolution, Inc.

If those documents were not forged, then, Ms. Kelly Davis *would have received* ***the Defendant's ARBITRATOR RANKING FORM*** *well before the deadline of Dec. 24, 2001.*

However Ms. Kelly Davis informed the Plaintiff that the Defendant did not submit its arbitrator ranking form before the deadline of Dec. 24, 2001 at least two times.

Hence, the Defendant forged those documents and continually lie is proved!

The Plaintiff and Ms. Kelly Davis had at least two conversations which were focused on whether the Defendant submitted its arbitrator ranking form on time.

After the deadline of Dec. 24, 2001, ***the Plaintiff called Ms. Kelly Davis and asked her whether the Defendant had submitted its arbitrator ranking form.*** Ms. Kelly Davis told the Plaintiff that the Respondent had not submitted its

arbitrator ranking form yet. She informed the Plaintiff that NASD would process the selection of arbitrator panel without waiting for the Respondent's arbitrator ranking form.

According to Arbitration Rule, if the Defendant (Respondent) did not submit its arbitrator ranking form before the deadline, all the arbitrators in the panel should be selected from the arbitrator ranking form submitted by the Plaintiff (Claimant). However, *when the Plaintiff received the arbitrator panel list decided by NASD,* ***the Plaintiff discovered that only one arbitrator was selected from the arbitrator ranking form submitted by the Plaintiff.*** *Hence, the Plaintiff called Ms. Kelly Davis again.* ***The Plaintiff asked Ms. Kelly Davis, "You told me that the Defendant did not submit its arbitrator ranking form before the deadline. Hence all the arbitrators in the arbitration panel should be selected from the arbitrator ranking form submitted by the Plaintiff. Why only one arbitrator which ranked number 4 in the arbitrator ranking form submitted by the Plaintiff was selected in the Panel." Ms. Kelly Davis replied to the Plaintiff that:*** "Yes. The Respondent did not submit its arbitrator ranking form before the deadline of Dec. 24, 2001.You are right that all the arbitrators should be selected from the arbitrator ranking form submitted by you. However, in the case if some arbitrators, which you selected, do not want to arbitrate this case, if there are not enough arbitrators available from your ranking form, then, NASD will select the rest arbitrator(s) for this panel***". She suggested me contact with Ms. Suzanne Green. The Plaintiff called Ms. Suzanne Green. Ms. Suzanne Green lied to the Plaintiff. She said: "The Respondent submitted its arbitrator ranking form on Dec. 24, 2001, the last day of the deadline". Ms. Suzanne Green told the Plaintiff that she would ask Ms. Kelly Davis talk to me together. However, Ms. Kelly Davis did not join Ms. Suzanne Green to lie to the***

Plaintiff. The Plaintiff also called one arbitrator who was selected in the Plaintiff's arbitrator ranking form. He reply to the Plaintiff that no one from NASD Dispute Resolution, Inc contacted with him on this case.

According to above conversation with Ms. Kelly Davis, the Defendant forged those documents and continually lie is proved.

The Plaintiff strongly requests this Court to arrange Ms. Kelly Davis to testimony on this court. Ms. Kelly Davis was the person handling this issue at that time. According to the above conversations with Ms. Kelly Davis, the Plaintiff believes that Ms. Kelly Davis will speak out the truth under the Court's protection. Until today (Nov. 24, 2003), Ms. Kelly Davis did not lie to the Plaintiff directly.

(II) The Defendant continually lie should be DOUBLE PUNISHED

In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives for Reform on Corporate Responsibility" (See Page 2 of Appendix 33 of the Brief Appendix of Appellant), President Bush said:
"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

On the same speech, (See Page 3 of Appendix 33 of the Brief Appendix of Appellant), President Bush said:
"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."

Considering the Defendant continually tells lies, the Plaintiff request double penalty to the Defendant.

The Plaintiff (Appellant/Cross-Appellee) respectively requests the US Court of Appears to make the following actions:

(I) The unfair Arbitration Award should be vacated.

(II) NASD's Arbitration Management Frauds should be punished. The minimum punishment should be **$2,000,000.00**.

(III) The Defendant (TD Water House Investor Service, Inc)'s Trade fraud, followed by its cheating customer, insult customer, cheating SEC, lie under OATH, etc should be punished. The minimum punishment should be **$2,000,000.00**.

(IV) If the total punishment exceeded $1,000,000.00, as Promised, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Security Workers, Lawyers and Judges to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

APPENDICES 9

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

Dec. 1, 2003

Plaintiff (Appellant/Cross – Appellee)'s MOTION On Requesting Further Double Penalty To The Defendant For It Hire Lawyers to Lie in Affidavit

(I) The Defendant Hire Lawyers to Lie in the Affidavit

The Plaintiff received the Defendant's attorney Mr. Derek C. Anderson's Affidavit on Nov. 25, 2003. **However, Mr. Derek C. Anderson's Affidavit is an obvious perjury**.

Mr. Derek C. Anderson wrote in the Affidavit:

After receiving Appellant's Motion. I searched TD Waterhouse's file and retrieved the facsimile transmitting TD Waterhouse's rankings of potential arbitrators. The cover letter to the NASD transmitting TD Waterhouse's rankings of arbitrators was dated December 11, 2001. The letter was delivered to the NASD via facsimile and overnight mail. The facsimile confirmation sheet indicates that the NASD received the letter on December 11, 2001, well before the December 24, 2001 NASD deadline.

Mr. Derek C. Anderson's Affidavit is an obvious perjury.

Lets use reductio ad absurdum ***approach to prove the above statement:***

Both the Defendant's cover letter and FAX COVER SHEET related to arbitrator ranking form submission are addressed to Ms. Kelly Davis, NASD Dispute Resolution, Inc.

Lets make the following assumption, and call it "Assumption X":
Assumption X: Suppose those Defendant's documents were not forged, suppose Mr. Derek C. Anderson's Affidavit is not a perjury. Ms. Kelly Davis had received the Defendant's arbitrator ranking form *well before the deadline of Dec. 24, 2001.*

However:
(A) After the deadline of Dec. 24, 2001, ***the Plaintiff called Ms. Kelly Davis and asked her whether the Defendant had submitted its arbitrator ranking form.*** Ms. Kelly Davis told the Plaintiff that the Respondent had not submitted its arbitrator ranking form yet. She informed the Plaintiff that

NASD would process the selection of arbitrator panel without waiting for the Respondent's arbitrator ranking form.

People have to ask the Defendant, WHY Ms. Kelly Davis would like to inform the Plaintiff that the Defendant did not submit its arbitrator ranking form before the deadline of Dec. 24, 2001, if she received the Defendant's ARBITRATOR RANKING FORM well before the deadline of Dec. 24, 2001?

(B) ***According to Arbitration Rule, if the Defendant (Respondent) did not submit its arbitrator ranking form before the deadline, all the arbitrators in the panel should be selected from the arbitrator ranking form submitted by the Plaintiff (Claimant). However,*** *when the Plaintiff received the arbitrator panel list decided by NASD,* ***the Plaintiff discovered that only one arbitrator was selected from the arbitrator ranking form submitted by the Plaintiff.*** *Hence, the Plaintiff called Ms. Kelly Davis again.* ***The Plaintiff asked Ms. Kelly Davis, "You told me that the Defendant did not submit its arbitrator ranking form before the deadline. Hence all the arbitrators in the arbitration panel should be selected from the arbitrator ranking form submitted by the Plaintiff. Why only one arbitrator which ranked number 4 in the arbitrator ranking form submitted by the Plaintiff was selected in the Panel." Ms. Kelly Davis replied to the Plaintiff that:*** "Yes. The Respondent did not submit its arbitrator ranking form before the deadline of Dec. 24, 2001. You are right that all the arbitrators should be selected from the arbitrator ranking form submitted by you. However, in the case if some arbitrators, which you selected, do not want to arbitrate this case, if there are not enough arbitrators available from your ranking form, then, NASD will select the rest arbitrator(s) for this panel".

People have to ask the Defendant, WHY Ms. Kelly Davis would like to confirm to the Plaintiff that the Defendant did not submit its arbitrator ranking form before the deadline of Dec. 24, 2001? WHY Ms. Kelly Davis would like to confirm to the Plaintiff that all the arbitrators in the arbitration panel should be selected from the arbitrator ranking form submitted by the Plaintiff unless there are not enough arbitrators available from the arbitrator ranking form submitted by the Plaintiff?

(C) When the Plaintiff called Ms. Suzanne Green. WHY Ms. Suzanne Green lied to the Plaintiff, "The Respondent submitted its arbitrator ranking form on Dec. 24, 2001, the last day of the deadline"?

(D) The Plaintiff started to investigate the ranking form submitting issue on Feb. 18, 2002. On Feb 24, 2002, the Plaintiff submitted the Arbitration Causal Challenge by email. In the same email, the Plaintiff asked Ms. Green the following simple questions:

========== *Simple Questions* ==========

I was heard that the defendant did not delivered their list of arbitrators even by Dec 26, 2001. Hence, I would like to ask the following
questions for fully understand how this panel list was decided:

(i) By what type of the mail that the defendant delivered their list of arbitrators?
(a) Certified Mail;
(b) Fed. Express.

(ii) What is the Postmark date on the defendant's mail for delivering their list of Arbitrators? Can I get a copy of the Envelop of the defendant's mail with the Postmark date?

(iii) By which date that your office received the defendant's mail regarding to the list of Arbitrators.

(iv) How the panel list was finally decided in detail?

On Feb. 28, 2002, the Plaintiff re-sent the above simple questions to
Ms. Suzanne Green.

On March 1, 2002, Ms. Suzanne Green was still un-able to answer the above simple questions, but she wrote in her reply email:
"it is the policy of this office to allow the opposing party to responds to such motion."

People have to ask the Defendant, if she received the Defendant's ARBITRATOR RANKING FORM well before the deadline of Dec. 24, 2001, WHY Ms. Suzanne Green was un-able to answer the above simple questions by Feb. 24, 2002(?), by Feb. 28, 2002(?), even by March 1, 2002?

(E) On March 1, 2002, the Plaintiff forwarded those simple questions to the Defendant.
However, the Defendant was also unable to reply those simple questions.

People have to ask the Defendant, if the Defendant's arbitrator ranking form was delivered to the NASD via facsimile and overnight mail on Dec. 11, 2001, if Mr. Kelly Davis received the Defendant's arbitrator ranking form well before the deadline of Dec. 24, 2001, WHY the Defendant was unable to answer those simple questions before Ms.

Elizabeth R. Clancy made the cover-up solution on March 26, 2002?

(F) On March 26, 2002, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, openly lied in her letter. Ms. Elizabeth R. Clancy claimed that Respondent's (the Defendant) ranking form was sent to NASD by facsimile and received by NASD on Dec. 11, 2001, with original copy arriving on Dec. 12, 2001.

People have to ask Ms. Clancy, December 11, 2001 was far away from December 24, 2001 deadline, overnight delivery is quite enough, **WHY** the Defendant send another copy by facsimile besides the overnight delivery? Is this just like an Old Story, "when completed drawing a beautiful picture of a snake, appending legs to that snake"?

From the above six issues, the consequences conducted by "Assumption X" are either self-contradiction or implausibility. ***With the "Assumption X", all the above questions cannot be answered.***

Hence, the "Assumption X" is patently untenable.

Hence, the "Assumption X" is incorrect.

Hence, those Defendant's documents related to arbitrators ranking form submission were forged.

Hence, *"Mr. Derek C. Anderson's Affidavit is an obvious perjury" is proved.*

By using reductio ad absurdum **approach,** ***without Ms. Kelly Davis's testimony, the Plaintiff has already successfully proved the Defendant's and NASD's frauds on the arbitrators ranking form submission.***

On this issue, the NASD Arbitration Administrator Ms. Suzanne Green lied.

On this issue, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, lied.
On this issue, Mr. Derek Anderson, Mr. Pete S. Michaels, the lawyers for the Defendant, lied and continually lying, even lied in their Affidavit.

Those Liars constructed the Fraud of Arbitrators Ranking Form Submission Issue. The Defendant should be punished on this Fraud.
The Defendant hiring Lawyers to lie in the Affidavit should be seriously and double punished.

The Plaintiff still strongly requests this Court to arrange Ms. Kelly Davis to testimony on this court. Ms. Kelly Davis was the person handling this issue at that time. According to the conversations with Ms. Kelly Davis, the Plaintiff believes that Ms. Kelly Davis will speak out the truth under the Court's protection. Until today (Dec. 1, 2003), Ms. Kelly Davis did not lie to the Plaintiff directly.

(II) Why does the Defendant panic?
This is another simple question:
Assumption: Suppose those Defendant's documents were not forged, suppose Mr. Derek C. Anderson's Affidavit is not a perjury. Suppose Ms. Kelly Davis had received the Defendant's arbitrator ranking form well before the deadline of Dec. 24, 2001.

Then, WHY does the Defendant panic? WHY does the Defendant submit documents again and again to against Ms. Kelly Davis' testimony? According to the above Assumption, the Defendant should request and support Ms. Kelly Davis' testimony, right?

The only possible conclusion is:

The above assumption is incorrect. The reason why the Defendant panic and strongly against Ms. Kelly Davis' testimony in this Court is:
Those Defendant's documents related to Arbitrators Ranking Form submission were forged. Mr. Derek C. Anderson's Affidavit is a perjury. Ms. Kelly did not receive the Defendant's arbitrator ranking form well before the deadline of Dec. 24, 2001.

(III) The Defendant is trying to escape from the Justice Judgment in this Appeals Court

(A) The Defendant mistakenly explained the Law
The Defendant wrote in its Memorandum of Nov. 24, 2003:
This Court should deny Appellant's Motion for the reasons that such testimony is not allowed by the federal rules of appellate procedure and that the record on appeal has already been established. Rule 10 of the federal rules of appellate procedure limit the record to "the original papers and exhibits filed in the district court, the transcript of proceedings, and a certified copy of the docket entries delivered by the district clerk"

The Defendant mistakenly explained the law in its Brief for Defendant. Now, it mistakenly explained the law again.
Rule 10 of the federal rules of appellate procedure is defined for:
(a) Composition of the Record on Appeal
(b) The Transcript of Proceedings

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable.
(d) Agreed Statement as the Record on Appeal
(e) Correction or Modification of the Record
Rule 10 of the federal rules of appellate procedure (See Appendix in this Motion) does not define whether the Appellant should or should not ask case closely related witness to expose and confirm the Appellee's fraud which is list in the record.
Rule 10 of the federal rules of appellate does not define whether the Appellant should or should not ask case closely related witness to testimony in order to further confirm the Appellant's statement which is written in the record.

The Defendant mistakenly explains the law should be punished.

(B) The Defendant's Fraud on Ranking Form is not a new record

The Defendant wrote in its Memorandum of Nov. 24, 2003:
Attempts to supplement the record should be disregarded by the Court ...

The Defendant's Fraud on Arbitrator Ranking Form Submission is not a new record. It is recorded in many documents, which submitted to the District Court. The Defendant can find those documents in the Brief Appendix of Appellant as following:
(1) 09. Arbitration Causal Challenge;
(2) 10. Ms. Elizabeth R. Clancy's Letter;

(3) 17. Motion: Plaintiff strongly request to re-open this case

(This is the first Motion to vacate the unfair arbitration result.

This Motion is submitted to the District Court within one month

after the Plaintiff received the unfair arbitration result.

Count 8 of this Motion described this Fraud in detail.)

(4) 18. Plaintiff Motion's Cover Letter;

Requesting Ms. Kelly Davis to testimony on the court is only for confirming that the Fraud listed in the record was indeed happened.
The Defendant's Fraud should not be disregarded. The law should punish the Defendant's Fraud. The best practice for the Defendant is commits its Fraud and other Mistakes ASAP. Any continual lies and cheatings will conduct more serious penalties. Any Defendant's attempts for escaping from the Justice Judgment will be failed.

(C) Requesting Ms. Kelly Davis testimony is not a new record

The Defendant wrote in its Memorandum of Nov. 24, 2003:
The declaration of a witness which was never filed or submitted to the District Court cannot be part of the record on appeal.

The Defendant's above statement is worthless, because it ignored the following records in the Brief Appendix of Appellant:

(1) 29. Plaintiff's MOTION To Request Ms. Kelly Davis To Testimony on the Court

(2) 32. Court Ruling on Plaintiff's Feb. 17, 2003 Motion and April 17, 2003 Motion.

The Plaintiff submitted a Motion to Request Ms. Kelly Davis To Testimony on the Court on Feb. 17, 2003. However, the District Court Clerk claimed that she did not receive that Motion. Hence, the Plaintiff re-submitted the same Motion again by certified mail immediately.

Mr. William Young did not deny this Motion until this case was submitted to the Court of Appears. The Plaintiff's Motion to Request Ms. Kelly Davis To Testimony on the District Court on Feb. 17, 2003 is one pending Motion when the Appeal Notice was submitted.

In the Court Ruling on this Motion (See Appendix 32 in the Brief Appendix of Appellant), Mr. William Young used the words " In view of appeal, ...", it might indicate that Mr. William Young might consider to ask Ms. Kelly Davis to testimony on the District Court.

By now, we have proved that the Argument in Defendant's Memorandum is worthless. There is no law support Defendant's Memorandum. All the Defendant's statements are baseless.

(IV) The Defendant Hire Lawyers to Lie in their Affidavit should be further DOUBLE PUNISHED

In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives for Reform on Corporate Responsibility" (See Page 2 of

Appendix 33 of the Brief Appendix of Appellant), President Bush said:
"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

On the same speech, (See Page 3 of Appendix 33 of the Brief Appendix of Appellant), President Bush said:
"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."

Considering the Defendant hired lawyers "bravely" telling lies in its Affidavit, the Plaintiff request further double penalty to the Defendant.

The Plaintiff (Appellant/Cross-Appellee) respectively requests the US Court of Appears to make the following actions:

(I) The unfair Arbitration Award should be vacated.

(II) NASD's Arbitration Management Frauds should be punished. The minimum punishment should be **$4,000,000.00**.

(III) The Defendant (TD Water House Investor Service, Inc)'s Trade fraud, followed by its cheating customer, insult customer, cheating SEC, lie under OATH, etc should be punished. The minimum punishment should be **$4,000,000.00**.

(IV) As Promised, the Plaintiff is planning to use at least 80% of the awarded **$8,000,000.00** to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer

technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Security Workers, Lawyers and Judges to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

Appendix

Rule 10, 11, 12 in FEDERAL RULES OF APPELLATE PROCEDURE

Rule 10. The Record on Appeal

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

(1) **Appellant's Duty to Order.** Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or
(B) file a certificate stating that no transcript will be ordered.
(2) **Unsupported Finding or Conclusion.** If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.
(3) **Partial Transcript.** Unless the entire transcript is ordered:
(A) the appellant must—within the 10 days provided in Rule 10(b)(1)—file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;
(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 10 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and
(C) unless within 10 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the district court for an order requiring the appellant to do so.
(4) **Payment.** At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.
(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a

statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the courts resolution of the issues. If the statement is truthful, it—together with any additions that the district court may consider necessary to a full presentation of the issues on appeal—must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The dis-

trict clerk must then send it to the circuit clerk within the time

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provided by Rule 11. A copy of the agreed statement may be filed
in place of the appendix required by Rule 30.

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July
1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993;
Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998.)

Rule 11. Forwarding the Record

(a) Appellant's Duty. An appellant filing a notice of appeal must

comply with Rule 10(b) and must do whatever else is necessary to
enable the clerk to assemble and forward the record. If there are
multiple appeals from a judgment or order, the clerk must for-
ward a single record.

(b) Duties of Reporter and District Clerk.

(1) **Reporter's Duty to Prepare and File a Transcript.** The re-
porter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporters receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) **District Clerk's Duty to Forward.** When the record is com-
plete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the

record designated for omission by local rule of the court of ap-

peals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(c) Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal. The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

(d) [Abrogated.]

(e) Retaining the Record by Court Order.

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending,

subject, however, to call by the court of appeals.
(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and
the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.
(f) Retaining Parts of the Record in the District Court by Stipula-
tion of the Parties. The parties may agree by written stipulation
filed in the district court that designated parts of the record be re-
tained in the district court subject to call by the court of appeals
or request by a party. The parts of the record so designated re-
main a part of the record on appeal.
(g) Record for a Preliminary Motion in the Court of Appeals. If,
before the record is forwarded, a party makes any of the following
motions in the court of appeals:
□ for dismissal;
□ for release;
□ for a stay pending appeal;
□ for additional security on the bond on appeal or on a supersedeas bond; or
□ for any other intermediate order—
the district clerk must send the court of appeals any parts of the
record designated by any party.
(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July
1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998.)

Rule 12. Docketing the Appeal; Filing a Representation Statement;
Filing the Record

(a) Docketing the Appeal. Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

(b) Filing a Representation Statement. Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 10 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(c) Filing the Record, Partial Record, or Certificate. Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July

1, 1986; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998.)

TITLE III. REVIEW OF A DECISION OF THE UNITED STATES TAX COURT

Rule 13. Review of a Decision of the Tax Court

APPENDICES 10

United States Court of Appeals
For the First Circuit

Nos. 03-1415
03-1478

DE SHEN,
Plaintiff, Appellant/Cross-Appellee,

v.

T.D. WATERHOUSE INVESTOR SERVICE, INC.,
Defendant, Appellee/Cross-Appellant.

JUDGMENT
Entered: February 5, 2004

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed. See Loc. R. 27(c).

De Shen's various motions requesting that this court hold a hearing with regarding to one of his claims of fraud and order sanctions against T.D. Waterhouse for "[c]ontinually [t]elling [l]ie[s]" are denied.

By the Court:

RICHARD CUSHING DONOVAN
Richard Cushing Donovan, Clark

APPENDICES 11

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

Feb 22, 2004

Plaintiff (Appellant/Cross – Appellee)'s MOTION
On Mistakes of Judgment of Feb. 5 2004

The JUDGMENT entered on February 5, 2004 is clearly a mistake.

The JUDGMENT uses Loc. R. 27 (c) as its authority. However,

(1) Loc. R. 27 (c) does not grants the judges to do not punish the Fraud;

(2) Loc. R. 27 (c) does not grants the judges to do not investigate the Fraud;
(3) Justice is the Truth In Action. Loc. R. 27 (c) does not grants the judges to make the judgment without hearing the truth from Ms. Kelly Davis's testimony.

The three judges, Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya made the judgment. However, they do not even have the courage to sign their names on the Judgment. This proved that the Judges themselves do not believe that they did a right thing.

Any misjudgment should be reviewed and re-judged by the people of USA, maybe further be reviewed and re-judged by the people in the world.

History will record all the judges who use their talents to make clear judgment for the people. Billions people will remember them.
History will also record those unqualified judges who frequently make misjudgments. Billions people will laugh at them.

In order to help the people to review and judge the JUDGMENT made by Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya, the following questions are proposed for them to answer. They may answer these questions separately or answer these questions as a group. Do not answer these questions or deny this motion is also an answer. In this case, people will smell the bureaucracy characteristics from them.

Here are the questions that Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya needs to answer:
(1) Should Frauds be punished?

(2) If T.D. Waterhouse made a Fraud, should T.D. Waterhouse be punished?
(3) If NASD made a Fraud or Frauds, should NASD be punished?
(4) Since NASD is a second justice organization, if NASD violated the Law, made Frauds, should NASD be double punished?
(5) If a judge does not punish Frauds, is that judge ignoring his/her duty?
(6) If a judge in District Court made a mistake, but a judge or a panel of judges from Appeals Court do not correct his/her mistake, is that judge or that panel of judges from Appeals Court ignoring his/her/their duty?

The answer by Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya will be judged by the People. And also by the Supreme Court of USA.

(Note. The Plaintiff did not receive the JUDGMENT entered on Feb. 5, 2004 until the Plaintiff called the Court on Feb. 19, 2004. The Plaintiff wishes this type of issue will not happened again.)

APPENDICES 12

United States Court of Appeals
For the First Circuit

No. 03-1415

DE SHEN,
Plaintiff, Appellant/Cross-Appellee,

v.

T.D. WATERHOUSE INVESTOR SERVICE, INC.,
Defendant, Appellee/Cross-Appellant.

No. 03-1478

DE SHEN,
Plaintiff, Appellee,

v.

T.D. WATERHOUSE INVESTOR SERVICE, INC.,
Defendant, Appellant.

Before
Campbell, Senior Circuit Judge,
Torruella and Selya, Circuit Judges.

ORDER OF COURT
Entered: April 6, 2004

The petition for rehearing is denied.

By the Court:

Richard Cushing Donovan, Clark

By: Mark R. SYSKA
Chief Deputy Clerk

[cc. De Shen, Pete S. Michaels, Esq. And Derek C. Anderson, Esq]

APPENDICES 13

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

April 12, 2004

Plaintiff (Appellant/Cross – Appellee)'s MOTION
On 2nd Request the judges to answer the Basic Questions in Plaintiff's Feb. 22's Motion

On April 8, 2004, the Plaintiff received the response (to the Plaintiff's motion of Feb. 22, 2004) from the three judges, Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya. (Note: this document did not put a date on the document. The postmark is April 6, 2004.)

The response includes only one sentence:
"The petition for rehearing is denied."

The Plaintiff has to ask Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya: You did not hold any hearing on this case yet, where is the word "rehearing" come from?

The response from Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya DID NOT denied the Plaintiff's statements of the following:

"The JUDGMENT entered on February 5, 2004 is clearly a mistake.

The JUDGMENT uses Loc. R. 27 (c) as its authority. However,

(1) Loc. R. 27 (c) does not grants the judges to do not punish the Fraud;
(2) Loc. R. 27 (c) does not grants the judges to do not investigate the Fraud;
(3) Justice is the Truth In Action. Loc. R. 27 (c) does not grants the judges to make the judgment without hearing the truth from Ms. Kelly Davis's testimony."

Hence, the Plaintiff requests this Court to take any necessary actions to correct the judgment mistake of February 5, 2004.

In the response, Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya did not answer the Plaintiff's basic questions in Plaintiff's Motion of Feb. 22, 2004. However, all those questions are required to be answered. If Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya are not talented enough (or do not have the courage) to answer those questions, then they have to openly commit their mistakes. A former apology is required.

Here are the questions that Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya needs to answer:

(1) Should Frauds be punished?
(2) If T.D. Waterhouse made a Fraud, should T.D. Waterhouse be punished?
(3) If NASD made a Fraud or Frauds, should NASD be punished?
(4) Since NASD is a second justice organization, if NASD violated the Law, made Frauds, should NASD be double punished?
(5) If a judge does not punish Frauds, is that judge ignoring his/her duty?
(6) If a judge in District Court made a mistake, but a judge or a panel of judges from Appeals Court do not correct his/her mistake, is that judge or that panel of judges from Appeals Court ignoring his/her/their duty?

The answer by Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya will be judged by the People. And also by the Supreme Court of USA.

APPENDICES 14

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

April 26, 2004

Plaintiff (Appellant/Cross – Appellee)'s MOTION
On 3rd Request the judges to answer the Basic Questions in Plaintiff's Feb. 22's Motion

The Plaintiff asked the judges the basic questions in Plaintiff's Motion of Feb. 22, 2004.
However, more than two months passed, the judges are still unable to answer those basic questions. The Plaintiff has to ask the judges, are those basic questions really difficult for you to answer? Why you cannot answer those basic questions within the reasonable response time?

On April 13, 2004, Susan corrected the missing date issue on the Judge's response of April 6, 2004. Any correction on the mistake is welcomed. The Plaintiff is waiting for the judge's correction on their misjudgments of Feb. 5, 2004 and April 6, 2004.

A judge is Honorable if he/she can make correct judgments. However, judge is human. Any human can make mistake. Hence, a judge is also Honorable if he/she can correct his/her misjudgment. If a judge made a mistake, but refuse to correct his/her mistake, then People have to doubt whether that judge is qualified as a judge.

Regarding to the judges' response of April 6, 2004, which includes only one sentence:

"The petition for rehearing is denied."

The Plaintiff asked the judges: You did not hold any hearing on this case yet, where is the word "rehearing" come from? Until now, the judges have not answer this question yet.

Actually, judge Young also did not hear the frauds of Defendant and NASD completely. On the Feb.6, 2003's hearing, within the short 20 minutes, Judge Young did not make a hearing on the Frauds of TD Water House and NASD arbitration administrator. On the Feb.6, 2003's hearing, the main debate is focused on whether it is OK to reopen this case on the US District Court. And judge Young made correct judgment on this issue. Judge Young said: "Okay. I rule that his motion to reopen tolls the time …" (See page 6 of Addendum 07 in the Brief of Appellant) However, Judge Young's reasoning on the conclusion has defects. Judge Young said: " … because the only reason to reopen a case after arbitration is either to confirm or vacate the award." If

Judge Young read Plaintiff's motions carefully, he should understand that there is second reason to reopen this case. That is "The Frauds made by TD Water House and NASD arbitration administrator during and after the arbitration should be punished."

This case started from a relatively minor issue (Trade Mistake). However, this case becomes a serious case due to the Frauds made by TD Water House and NASD arbitration administrator during and after the arbitration. In the process of appeals in the US Court of Appeals of First Circuit, the Plaintiff has the opportunity to prove all those Frauds made by TD Water House and NASD arbitration administrator. By asking critical questions in the Reply Brief of Plaintiff, and the Defendant failed to submit its Reply Brief, the Plaintiff successfully proved the NASD arbitration administrator's Fraud on "cooking the arbitration hearing tape" (See Plaintiff's motion of Sep. 29, 2003). By requesting Ms. Kelly Davis testimony on this Court and by using ***reductio ad absurdum*** approach, the Plaintiff successfully proved the "Fraud on selecting arbitration panel" made by TD Water House and NASD arbitration administrator; Also, by using ***reductio ad absurdum*** approach, the Plaintiff successfully proved that the Defendant Hire Lawyers to Lie in Affidavit. (See Plaintiff's motions of Nov. 3, 2003 and Dec. 1, 2003). Judge Young did not hear all those facts.

Now, the essential issue of this case is: People against Frauds.
Our judges should stand with the People side, and punish the Frauds made by TD Water House and NASD arbitration administrator.

Due to both the US District Court and the US Court of Appears of First Circuit did not hold any hearing on the

Frauds made by TD Water House and NASD arbitration administrator, the Plaintiff respectively request the judges in this court to take one of the following actions:

(1) Hold a hearing with Juries on this Court to punish the Frauds made by TD Water House and NASD arbitration administrator;
(2) Or Order the US District Court hold a hearing with Juries to punish the Frauds made by TD Water House and NASD arbitration administrator.

The response from the judges on April 6, 2004 DID NOT denied the Plaintiff's statements of the following:
"The JUDGMENT entered on February 5, 2004 is clearly a mistake.

The JUDGMENT uses Loc. R. 27 (c) as its authority. However,

(1) Loc. R. 27 (c) does not grants the judges to do not punish the Fraud;
(2) Loc. R. 27 (c) does not grants the judges to do not investigate the Fraud;
(3) Justice is the Truth In Action. Loc. R. 27 (c) does not grants the judges to make the judgment without hearing the truth from Ms. Kelly Davis's testimony."

Hence, the Plaintiff requests this Court to take any necessary actions to correct the judgment mistake of February 5, 2004.

In this motion, Plaintiff would like to request the judges the 3rd time to answer the basic questions in Plaintiff's Motion of Feb. 22, 2004. All those questions are required to be answered. If the judges are not talented enough (or do not have the courage) to answer those questions, then they have to openly commit their mistakes. A former apology is required.

Here are the questions that judges in the US Court of Appeals needs to answer:

(1) Should Frauds be punished?
(2) If T.D. Waterhouse made a Fraud, should T.D. Waterhouse be punished?
(3) If NASD made a Fraud or Frauds, should NASD be punished?
(4) Since NASD is a second justice organization, if NASD violated the Law, made Frauds, should NASD be double punished?
(5) If a judge does not punish Frauds, is that judge ignoring his/her duty?
(6) If a judge in District Court made a mistake, but a judge or a panel of judges from Appeals Court do not correct his/her mistake, is that judge or that panel of judges from Appeals Court ignoring his/her/their duty?

The answer by Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya will be judged by the People. And also by the Supreme Court of USA.

APPENDICES 15

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

May 23, 2004

Plaintiff (Appellant/Cross – Appellee)'s MOTION
On 4th Request the judges to answer the Basic Questions in Plaintiff's Feb. 22's Motion

The Plaintiff asked the judges the basic questions in Plaintiff's Motion of Feb. 22, 2004.
However, more than THREE months passed, the judges are still unable to answer those basic questions. The Plaintiff has to ask the judges, are those basic questions really difficult for you to answer? Why you cannot answer those basic questions within the reasonable response time? The judges' answers of those Basic Questions need to be included in the "Opinions

Below" section of the writ of certiorari for the supreme court of the United States. If Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya are not talent enough (or do not have courage) to answer those BASIC questions, then, is there any judge(s) in the US COURT OF APPEALS FOR THE FIRST CIRCUIT who is talent enough or has courage to answer those BASIC questions?

The Plaintiff is waiting for the judge's correction on their misjudgments of Feb. 5, 2004 and April 6, 2004.

A judge is Honorable if he/she can make correct judgments. However, judge is human. Any human can make mistake. Hence, a judge is also Honorable if he/she can correct his/her misjudgment. If a judge made a mistake, but refuse to correct his/her mistake, then People have to doubt whether that judge is qualified as a judge.

Regarding to the judges' response of April 6, 2004, which includes only one sentence:

"The petition for rehearing is denied."

The Plaintiff asked the judges: You did not hold any hearing on this case yet, where is the word "rehearing" come from? Until now, the judges have not answer this question yet. The judges in the United States Court of Appeals for the First Circuit need to provide the following information to the People:

On which date, by which judge(s) of the United States Court of Appeals for the First Circuit, held the **FIRST** hearing on this case?

So that People can understand where is the word "rehearing" coming from.

Actually, judge Young also did not hear the frauds of Defendant and NASD completely. On the Feb.6, 2003's hearing, within the short 20 minutes, Judge Young did not make a hearing on the Frauds of TD Water House and NASD arbitration administrator. On the Feb.6, 2003's hearing, the main debate is focused on whether it is OK to reopen this case on the US District Court. And judge Young made correct judgment on this issue. Judge Young said: "Okay. I rule that his motion to reopen tolls the time ..." (See page 6 of Addendum 07 in the Brief of Appellant) However, Judge Young's reasoning on the conclusion has defects. Judge Young said: " ... because the only reason to reopen a case after arbitration is either to confirm or vacate the award." If Judge Young read Plaintiff's motions carefully, he should understand that there is second reason to reopen this case. That is "The Frauds made by TD Water House and NASD arbitration administrator during and after the arbitration should be punished."

This case started from a relatively minor issue (Trade Mistake). However, this case becomes a serious case due to the Frauds made by TD Water House and NASD arbitration administrator during and after the arbitration. In the process of appeals in the US Court of Appeals of First Circuit, the Plaintiff has the opportunity to prove all those Frauds made by TD Water House and NASD arbitration administrator. By asking critical questions in the Reply Brief of Plaintiff, and the Defendant failed to submit its Reply Brief, the Plaintiff successfully proved the NASD arbitration administrator's Fraud on "cooking the arbitration hearing tape" (See Plaintiff's motion of Sep. 29, 2003). By requesting Ms. Kelly Davis testimony on this Court and by using ***reductio ad absurdum*** approach, the Plaintiff successfully proved the "Fraud on selecting arbitration panel" made by TD Water House and NASD arbitration administrator; Also, by using

reductio ad absurdum approach, the Plaintiff successfully proved that the Defendant Hire Lawyers to Lie and Perjury in Affidavit. (See Plaintiff's motions of Nov. 3, 2003 and Dec. 1, 2003). Judge Young did not hear all those facts.

Now, the essential issue of this case is: People against Frauds.
Our judges should stand with the People side, and punish the Frauds made by TD Water House and NASD arbitration administrator.

Due to both the US District Court and the US Court of Appears of First Circuit did not hold any hearing on the Frauds made by TD Water House and NASD arbitration administrator, the Plaintiff respectively request the judges in this court to take one of the following actions:

(1) Hold a hearing with Juries on this Court to punish the Frauds made by TD Water House and NASD arbitration administrator;

(2) Or Order the US District Court hold a hearing with Juries to punish the Frauds made by TD Water House and NASD arbitration administrator.

The response from the judges on April 6, 2004 DID NOT denied the Plaintiff's statements of the following:
"The JUDGMENT entered on February 5, 2004 is clearly a mistake.

The JUDGMENT uses Loc. R. 27 (c) as its authority. However,

(1) Loc. R. 27 (c) does not grants the judges to do not punish the Fraud;

(2) Loc. R. 27 (c) does not grants the judges to do not investigate the Fraud;

(3) Justice is the Truth In Action. Loc. R. 27 (c) does not grants the judges to make the judgment without hearing the truth from Ms. Kelly Davis's testimony."

Hence, the Plaintiff requests this Court to take any necessary actions to correct the judgment mistake of February 5, 2004.

In this motion, Plaintiff would like to request the judges the 4th time to answer the basic questions in Plaintiff's Motion of Feb. 22, 2004. All those questions are required to be answered. If the judges are not talented enough (or do not have the courage) to answer those questions, then they have to openly commit their mistakes. A former apology is required.

Here are the questions that judges in the US Court of Appeals needs to answer:

(1) Should Frauds be punished?
(2) If T.D. Waterhouse made a Fraud, should T.D. Waterhouse be punished?
(3) If NASD made a Fraud or Frauds, should NASD be punished?
(4) Since NASD is a second justice organization, if NASD violated the Law, made Frauds, should NASD be double punished?
(5) If a judge does not punish Frauds, is that judge ignoring his/her duty?
(6) If a judge in District Court made a mistake, but a judge or a panel of judges from Appeals Court do not correct his/her mistake, is that judge or that panel of judges from Appeals Court ignoring his/her/their duty?

The answer by the judges of the United States Court of Appeals for the First Circuit will be judged by the People. And also it will be judged by the Supreme Court of USA.

United States Court of Appeals
For the First Circuit

No. 03-1415
No. 03-1478

DE SHEN,
Plaintiff, Appellant,

v.

T.D. WATERHOUSE INVESTOR SERVICE, INC.,
Defendant, Appellee.

Before
Torruella, Circuit Judge,
Campbell, Senior Circuit Judge,
Selya, Circuit Judge.

ORDER OF COURT

Entered: June 18, 2004

Mandate was issued in this case on April 13, 2004, with the result that this case is no longer under judicial consideration. Construing petitioner's "Motions on 2nd, 3rd, and 4th Request the judges to answer the Basic Questions in Plaintiff's Feb. 22's Motion" as motions to recall mandate, the same are denied.

These appeals having been closed, the Clerk of Court is hereby directed not to accept any further filings in these cases (Docket Nos. 03-1415, 03-1478).

By the Court:

Richard Cushing Donovan, Clark

By: Mark R. SYSKA
Chief Deputy Clerk

[cc: De Shen, Pete S. Michaels, Esq. And Derek C. Anderson, Esq.]